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Handbook
of
Montana Forms
of Local Government

JAMES J. LOPACH
LAUREN S. McKINSEY



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HANDBOOK
of
MONTANA FORMS OF LOCAL GOVERNMENT

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Edited by
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the nature of self-government charter writing in Montana.

It is important to realize from the start that a handbook such as this can accomplish some things but not others. It can bring together and provide access to a great deal of information on local government in Montana and the United States in general. It can serve as a ready reference whenever an important question arises. Both uses may be of great benefit to study commissioners.

But no handbook, including this one, can provide a study group with specific remedies for local conditions in individual communities. Objectives can be suggested, criteria for evaluating forms presented, and a balanced appraisal of optional forms of local government can be written. But, final decisions regarding which objectives to pursue, which criteria to employ, and which alternative form is most suitable for a particular locality will have to be made by each study commission. Each decision will be based on a unique combination that can only be evaluated or anticipated by the study commission familiar with local conditions.

It is our hope, however, that each study commission will find useful information in this Handbook on Local Government. That being so, we will have achieved our goal of providing assistance in the demanding work of studying and recommending a form of government to fit the needs of each community in Montana.

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CHAPTER I

HISTORY OF LOCAL GOVERNMENT REFORM IN THE UNITED STATES

Local government is the level of government closest to ordinary citizens. Governments of cities and towns provide their residents with day-to-day services which are almost taken for granted -- services such as sidewalks, traffic control, street lighting, law enforcement, and water supply. County governments make their presence felt through other kinds of activities -- for instance, maintaining roads, collecting taxes, and administering elections.

When cities and counties perform their functions well, citizens generally are unconcerned about local government matters. But when cities and counties fall down on the job, their failure is obvious and swift reaction usually follows.

Local government reform has occupied more attention in American life than reform of state or national governments. The city or county has been like an old friend -- good points taken for granted, but faults recognized immediately. So, local government reform has been characterized by paternalistic civic activity -- like calling that old friend's attention to his annoying habits.

Familiarity is not the only reason for this uneven concern about local government. Traditionally, Americans have expected local governments to be citadels of civic virtue and have been content to assume that they are, unless events prove otherwise. Thomas Jefferson probably best exemplified this feeling with his observation that the best government is small government close to the people.

Local government reform movements have grown out of these circumstances. Calls for change have normally followed upon service failure or scandal, and reformers have attempted to hold local governments to the highest standards of decency and democratic values. Thus, local government reform traditionally has been identified with responsible behavior and good citizenship.

Early Reform Period: the Business Model

Local government reform had its inception in the last part of the nineteenth century. Early reformers reacted against the influence of special interests and party politics in affairs of local government. It was felt that government should be based on common sense rather than group interests and partisan strife. The model most often used to illustrate the proper governmental arrangement was the business corporation. Thus, writings in the early local government reform period emphasized administrative efficiency as the primary public objective. Readers were led to believe that

. . . there is a definable 'right' answer to every public question, thus implying that conflict is unnecessary and that differences of opinion are not wholly legitimate. Typically, these . . . reformers also believed that the pursuit of "special interests" is immoral, that all men should devote themselves to the "public interest," that there are no fundamental group differences, and that reasonable men can arrive at a "proper" solution through calm deliberation.

In the early days of the twentieth century, local government functions were few and did not cost much to perform. Citizens demanded less, state standards were not as high, and service requirements were not as extensive as they are today. In that simpler time, government was not complex; the administration and supervision of public activities could be done casually.

The scope of local government, however, expanded as other levels of government did during the twentieth century. Soon the idea that large numbers of public amenities and service functions -- such as sidewalks, streets and roads, water and sewage systems -- were a major purpose of local government became a part of citizen expectations.

The early local government reform movement turned increasingly to the business world for its model as service functions became a greater part of local government responsibilities. Accordingly, the emphasis of reform efforts was concentrated on the structure and economic management of municipal government. Support for these efforts was enhanced by awareness of the sorry state of municipal government generally, and by the scandals that swept larger cities in the 1800's.

Application of the principles of business organization brought about changes in public expectations for city and town governments. If business corporation got along so well with a board of directors and professional managers, for example, why couldn't cities that were in the "business" of delivering services to people also benefit from this approach? Specific proposals for reform were developed from this point of view. It was argued that city government should utilize:

1. An appointed, strong executive - administrative control should be concentrated in the hands of a professional city manager.
2. A short ballot - only a small, part time legislative body should be elected; other officials should be appointed professionals.
3. Small city council - leading citizens would be willing to contribute their talents to this part-time job and would set policies for the full-time professionals to carry out.
4. City-wide elections - members of a city council elected by all

of the citizens would be less likely to work for the interests of only a part of the community.

5. Nonpartisan elections - political party strife, party-oriented groups, and state and national issues have nothing to do with conducting local government affairs.²

These key recommendations of the early metropolitan reform movement were based on a number of assumptions. First, one basic principle was the idea that the primary function of the city is to provide services. Secondly, it was accepted that efficiency is the test of a good government. It follows, then, that the best government is the one that operates at the least possible cost. Thirdly, because of the nature of local government, its structure should include professional technicians responsible for public administration. Finally, like shareholders of a corporation, citizens would still be in the driver's seat but they should leave the details of management to professionals. Policy making, therefore, would be left to members of the city council -- the people's representatives -- and running the government would be given over to experts.³

The socio-economic status of the reformers of the early twentieth century had an important influence on their message. They did not come from the laboring classes which had previously dominated municipal government, but represented the leading business groups and professional men in each city. Ostensibly reacting against domination of local governments by narrow and selfish interests, they sought to substitute their own similarly-restricted concepts of desirable public policy.⁴ It is an interesting aspect of this early phase of reform that they believed a change in the structure of local government would result in a change in its complexion and orientation. For them, change in a governmental form meant

change in those whom the government favored.

Reform Movement II: Fewer and Larger Local Governments

The second phase of local government reform in the twentieth century had more to do with the size of local government units than with their structure (i.e., considerations of offices, departments, division of powers, and election details). By the 1960's, local governments had become hard pressed to perform many government functions on an independent basis because the problems were area wide and demanded area wide responses. Both the Advisory Commission on Intergovernmental Relations and the Committee for Economic Development concluded that very few local units were large enough.⁵ This judgment encompassed the government units of towns and cities, municipalities and counties, urban and rural areas. In some areas, growth had occurred outside jurisdictional boundaries. Response to the service needs of these new areas had resulted in a proliferation of local government units -- new cities, special districts, urbanized counties -- and thus fragmentation of local government authority.

In other areas, the Committee for Economic Development found that towns and counties were too small to take advantage of economies of scale. It recommended consolidation of rural counties so that each unit would have at least 50,000 residents (53 of Montana's 56 counties have less than 50,000 persons). The committee also suggested the locating of county seats so that they were no more than about 100 miles distant from all residents. For incorporated, non-metropolitan units with fewer than 2,500 residents, the Committee offered two alternatives. They should disincorporate and permit strong county governments to administer their public services on a special assessment basis, or they should contract with counties for such services.

Concern with the size of local governments, therefore, has expressed itself in recommendations to overcome the limitations of rigid boundaries and set jurisdictions. Besides disincorporation and consolidation of counties, the most frequently mentioned approaches are intergovernmental agreements, single purpose and multipurpose special service districts, limited consolidation of government functions, and city-county consolidation.

Reform Movement III: Home Rule

Another phase of the American local government reform movement was the attempt to win increased power for municipalities and counties over their local affairs. This was the home rule movement, and its chief aim was nothing more than to strengthen local governments. The original impetus of home rule proponents was a desire to free cities from the absolute control of rural-oriented legislatures. A resulting side-effect also was seen as an advantage: state legislators no longer would have to bother themselves with the considerable detail of legislating for local governments.⁶

The philosophical justification for home rule has deep roots in the political soil of America. Belief in the wisdom of local control probably finds its most able expression in the words of Thomas Jefferson. Jefferson's insight, as applicable to his day as to ours, is that citizens of local government units have the ability, integrity, and desire to look after their own public affairs. Such local control is not only wise, it is necessary to preserve democratic values. The alternative to home rule -- distant and centralized control -- leads to arbitrary, unresponsive, and impersonal government. Achieving home rule has been seen as a first step in creating a better community.

The home rule movement has had different expressions; each has been a

means of wresting from the state control over the structures and powers of local governments. In general, then, home rule attempts to modify the principle that local governments are mere children of the state. Specifically, the home rule movement has generated three approaches for securing the maturation and independence of units of local government.⁷

The first states to extend home rule powers to some of their municipalities did so by granting these cities control over "exclusively local" matters. In practice, there was considerable difficulty in determining just what "exclusively local" meant, and the courts settled the problem in most cases by severely limiting the meaning of the phrase. Because of the conservative stand of the courts, the expectations of home rule advocates for increased local flexibility and discretion often were not realized.

To counteract the courts' impact, the home rule movement took a new tack. Some states enumerated local concerns in their constitutions in order to supply the detailed guidance that previously had been lacking. Ordinances based on these constitutional provisions would supersede conflicting state statutes. Some home rule proponents found this approach wanting, however, because new circumstances could alter the identity of what was "local." A constitutional amendment then would be necessary to expand local government control to currently local affairs.

The third approach to granting home rule powers to local governments was developed because of the problem of distinguishing between what is a local matter and what is a statewide matter. Under this plan, a home rule unit can exercise any power that the state or a charter has not specifically denied to it. This last approach completely reverses the traditional state-local government relationship. Formerly, a local government unit had

only the powers the state gave it; under this home rule plan, a city or county has those powers that are not denied to it. But the final word rests with the state, and for that reason this approach retains legislative supremacy. One benefit, however, is that doubt is erased; a local government clearly knows if it or the state is empowered to act in a specific area. When a problem situation confronts a home rule unit for the first time, the county or municipality can respond immediately because of the state's silence on the subject.

The 1972 Montana Constitution incorporated this last kind of home rule approach, but called it self-government powers. Elsewhere it has been called residual powers or shared powers. It will give self-government units in Montana the power to pass local legislation when there is no specific prohibition and the power to act concurrently with the state in many areas. This authorization is especially important for counties, because under the old constitution they possessed no ordinance-making power. The state legislature, however, still can reserve certain activities to state or regional control.

Thus, in 1972, Montana joined many other states by providing the opportunity for its units of local government to assume home rule powers. During 1976 some Montana counties and municipalities will be voting for the first time to adopt these powers. Missouri, in 1875, became the first state to allow home rule powers; as of 1975, more than half the states have extended some kind of home rule to their local governments.⁸ Although the early home rule movement for the most part left counties out of consideration, today at least twelve states, including Montana, provide for county home rule. In Montana, the future will tell whether the local governments and

the state legislature can work together to strengthen cities and counties through the self-government approach.

Reform Movement IV: Citizen Participation

The main thrust of recent local government reform runs contrary to the central values of previous phases. New emphasis has been given to the need for a truly representative quality in local government. This reform orientation has been called, variously, direct democracy, participatory democracy, decentralized government, neighborhood government, and citizen participation.

The early municipal reform movement is criticized by later reformers because it attempted to separate politics from local government and placed heavy reliance on the business corporation model. As a result, the business-related functions of government were over-emphasized and the sole standard of good government came to be efficiency. Furthermore, the values of the professional or expert were enshrined and participation by other interests and groups in governmental decision-making was discouraged.

The emphasis placed on improved public services by the second phase of local government reform is also criticized by the advocates of increased citizen participation. It has been charged that the service orientation of local government studies has often reduced citizenship to consumership.⁹ Another observation of the American local government reform movement is that the advocates of efficiency and economy never seem to think that the average city dweller may value other things more highly, including easy access to elected and appointed officials and a sense that local government works for them.¹⁰

It is interesting that citizen-participation advocates, like their

business-oriented predecessors, also emphasize structural changes in local government as the means to their goal. They hold that local government must be refashioned in some way to allow the ordinary citizen meaningful access to those public decisions that affect his or her life. Many different approaches have been put forward in the United States in recent years. These include:

- 1) citizen advisory boards to local governments;
- 2) neighborhood and community citizen councils;
- 3) neighborhood field offices and little city halls;
- 4) an ombudsman or citizen complaint bureau;
- 5) government multiservice centers;
- 6) town meeting form of government;
- 7) single, accountable executive;
- 8) model cities programs; and
- 9) community school boards.¹¹

These structural innovations are meant to improve the well-being of the individual citizen. Citizen participation itself becomes a means to this end. It is hypothesized by the advocates of decentralization that increased citizen participation will lessen feelings of powerlessness, increase governmental accountability, better fit government activities to community needs, and help develop a broader base of political leadership.

Recent reform themes, therefore, emphasize one of the most fundamental but most often neglected aspects of government. This characteristic, representation, was deliberately deemphasized by the efficiency-minded reformers. But supporters of local government decentralization say that such values as community, the sense of belonging, and effective citizen

citizen control also must find their way into the calculus of public life.

Local Government Review in Montana

Montana's voter review of local government in no way lies at variance with these different phases of the local government reform movement. The goals of the local government reformer of both yesterday and today can be considered during the review process and adopted by a Montana community if they are found to have merit. The review itself is not intended to be a vehicle for any particular reform idea. Other than involving citizens directly in discussions and decisions about the adequacy of their present government, the review process is free of bias. It will serve as a forum to thrash out the relative worth of different approaches to local government. In each individual community with its own unique problems, the suitability of professional managers and citizen participation, of consolidation and cooperation, of technicians and amateur administrators, and of general government powers and self-government powers can be weighed and worked out separately. The following chapters include materials that Montana local governments can use in considering these different reform directions.

FOOTNOTES

¹Brett W. Hawkins, Politics and Urban Policies (Indianapolis: The Bobbs-Merrill Company, Inc., 1971) p. 6.

²See John Porter East, Council-Manager Government: The Political Thought of Its Founder (Chapel Hill: University of North Carolina Press, 1965).

³See Lawrence J. R. Herson, "The Lost World of Municipal Government," American Political Science Review (June, 1957) pp. 330-345.

⁴Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," Social Change and Urban Politics: Readings, ed. by Daniel N. Gordon (Englewood Cliffs: Prentice Hall, Inc., 1973) pp. 111, 115.

⁵Committee for Economic Development, Modernizing Local Government (New York: The Committee, 1966) p. 11, and Advisory Commission on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization in Metropolitan Areas (Washington, D.C.: The Commission, 1962) p. 5.

⁶Note. "Conflicts between State Statutes and Municipal Ordinances," 72 Harvard Law Review 740 (1959).

⁷Stephanie Cole and Samuel K. Gove, Home Rule in Illinois (Urbana: Institute of Government and Public Affairs, University of Illinois, 1973) pp. 15-16.

⁸Joseph J. Karlesky, "Municipal Home Rule: Some Notes on Development," National Civic Review (September, 1972), p. 395.

⁹Norton E. Long, "Political Science and the City," Social Science and the City: A Survey of Urban Research, ed. by Leo F. Schoore (New York: Frederick A. Praeger, Publishers, 1967).

¹⁰Charles R. Adrian, "Metropology," Public Administration Review, XXI (Summer, 1961), p. 150.

¹¹See Douglas Yates, Neighborhood Democracy (Lexington, Massachusetts: D.C. Heath and Company, 1973) p. 28.

CHAPTER II

A TOPOGRAPHY OF MONTANA LOCALITIES

Local government in Montana consists primarily of 56 counties and 126 incorporated cities and towns. There also are more than 200 special service districts in the state, which are substantially independent governmental units that normally provide a single public service at the local level. Under the 1972 Montana Constitution, however, only counties and incorporated cities and towns are classified as "local government units." They alone are required to participate in the voter review of local government process and can avail themselves of self-government powers.

On the surface, these 126 municipalities and 56 counties appear quite similar in structural characteristics and broad activities. Fifty-five of Montana's 56 counties operate with the same form of government, electing three county commissioners and up to 11 more county officials. Petroleum County is unique in Montana in that it uses a county-manager form of government. Of the state's 126 municipalities, 123 employ a mayor-council form, while Bozeman, Helena, and Great Falls each has city-manager government. Montana is not a homogeneous state, so this structural similarity among its local governments is surprising.¹

Counties and municipalities have experimented with some variations. Silver Bow County voters have rejected proposals for consolidation of local governments three times in the past. Missoula County has looked at city-county consolidation and the city of Missoula has tried both the commission and the manager forms of government. District councils of local governments have been designated for the different areas of the state. Many counties have entered into interlocal agreements with municipalities to provide joint services and some adjacent counties have created joint departments, such as welfare. Still, similarity in local government structure seems to

be the rule.

The local government review process may be the vehicle through which the diversity of Montana's communities will be expressed in a variety of governmental forms. Some of the factors which account for the individuality of a community include its land area, population and tax base. These characteristics will be considered separately for counties and cities.

Complexion of Montana Counties

When the 1889 Montana Constitution was ratified, there were sixteen counties in the state. By 1925 the sixteen original counties had been divided into the present 56 Montana counties. This wild period of "county splitting" was accompanied and certainly stimulated by a nearly four-fold increase in the state's population.² People came to the state for a variety of reasons. The lure of precious minerals, the promise of rich cropland, the growth of the railroad and the beginnings of a timber industry attracted settlers moving along the upper great plains. People settled first around the river ports, mining camps and railheads, but networks of population spread into the back country as well. There was much migration within the state as people moved from one declining enterprise to another with brighter promise; from a dried out homestead in the east to a lumber camp in the west and then, perhaps, to the west coast.

The new settlers spread out along the rivers and valleys searching for the most desirable locations in which to work and live. They carved up the large counties in order to bring government services closer to the people. By national standards, the counties are still large and encompass different kinds of topography, people and activities. Traditions have grown in each of these entities, aided by the fact that the county lines have not changed

in the last 50 years.

Montana counties vary considerably in geographic area, ranging from Beaverhead's 5,560 square miles to Silver Bow's 715 square miles. The area of the average Montana county is 2,600 square miles, or about 50 miles by 50 miles. Today, most county residents are able to reach the county seat in no more than an hour,

Population figures for counties also show large differences. According to the 1970 census, Yellowstone was the largest with 87,367 while Petroleum had only 675 persons. In 1970, population density varied from Petroleum's 0.4 persons per square mile to Silver Bow's 58.7 per square mile. Montana counties, in short, show marked variance in terms of land area, number of inhabitants and density of population.

Population trends in counties over the years also have varied greatly. Between 1960 and 1970, the state as a whole increased 2.9 per cent in population. Individual county figures, however, ranged from an increase of 44.1 per cent in Lincoln to a 32.1 per cent decrease in Valley. Only a few counties experienced substantial growth: Missoula increased by 30.5 per cent; Gallatin by 24.8 per cent; and Jefferson by 21.9 per cent. The most consistent trend is seen in the declining population of Valley County. Between 1960 and 1970, 41 of the state's 56 counties lost population. An even more astounding fact is that 32 counties had fewer persons in 1970 than they did in 1930.

Population is much more stable in some counties than in others--in terms of the ratio of newcomers to long term residents. In 1970, 88 per cent of Carter County residents had lived there since 1955; for Meagher County the proportion was only 45 per cent, and for Gallatin County the proportion

was only 55 per cent.³ This statistic may be as important as that of growth rates in determining demands on county government.

Age distribution also is important in terms of demands on county resources. The proportion of people of school age, retirement age, and in the work force indicates whether the population is self-supporting or dependent. The proportion of the county population in the 5-19 age group ranges from 26 per cent in Sweet Grass to 36 per cent in Liberty; in the above-65 group, the range goes from 6 per cent in Lincoln to 17 per cent in Carbon. The work force population ranges from 33 per cent in Liberty to 49 per cent in Garfield.⁴

Counties also vary in terms of their prosperity. The median family income in Sweet Grass County was only \$6,530 in 1969; in Lewis and Clark, \$10,277.⁵ Prosperity is reflected in the different revenue sources for the county. The critical revenue source is the property tax. The Montana Legislature has made no other significant source of revenue available to counties.

The endowment of different counties also varies widely. The taxable valuation of county property in 1972 ran from Petroleum's \$2,382,643 up to Yellowstone's \$110,202,916. Twenty-one counties had 1972 taxable valuations below \$10,000,000; seven counties had a 1972 taxable valuation of over \$30,000,000.⁶

The amount of revenue that county governments raised in 1972-73 through the property tax shows an equally great variation. The high was Cascade with \$3,832,938, and the low was Petroleum with \$73,492. Ten counties raised more than one million dollars through the property tax, and nine counties raised less than \$300,000.⁷

Against the background of the above valuation and revenue levels, some high and low mill levy figures for 1972-73 Montana County operations are very interesting. At the extreme high end was Toole County with a total county levy of 66.55 mills. Other high mill levy counties were Prairie (66.27), Silver Bow (65.61), Ravalli (63.24), Pondera (62.05), Lewis and Clark (62.30), and Lake (60.13). The county with the lowest 1972-1973 levy was Petroleum with 25.66. Other low mill levy counties were Lincoln (31.79), Fallon (33.69), Treasure (33.80), and Powder River (35.35).

The high valuation/high revenue counties are, therefore, by no means the predominant high mill levy counties. The counties with high taxable valuations have a much easier time raising a given amount of revenue than do counties with a low taxable valuation. One mill can raise much more money in one county than in another. The wealthier counties can operate services at a robust level without overburdening their property owners with a high mill assessment.

The low valuation/low revenue counties, on the other hand, are the low mill levy counties. One property tax mill raises relatively little money in a "poor" county. If this county spends anywhere near what a county with a high taxable valuation spends, owners of similarly valued homes in the two counties are going to have vastly different tax bills. It appears that the poorer counties choose to operate at a bare-bones level in order to avoid overburdening their property owners.

On the basis of comparing taxable valuations, amounts of revenues, and mill level figures, it appears that it is the middle range counties which are caught in a bind. They are caught between providing adequate service levels and overburdening individual tax payers. They may have

growing populations which require expanded service deliveries, but they are not populous enough to take advantage of economies of scale to minimize demands on the tax base.

A breakdown of mill levy figures also serves to illustrate the diversity of needs in Montana counties. Many counties consistently assess the maximum mill levy (12 or 15 mills) for road funds, while other counties with large urban areas have low figures: Flathead (3.72) Missoula (1.00) or Yellowstone (4.20). Lincoln and Mineral counties have no road fund assessment at all because their roads are maintained by the Forest Service. Thus, while the state as a whole spends about 15 per cent of county funds on roads, the proportion of road fund to general fund expenditures ranges from 0 to over 100 per cent.⁸

Similarly, welfare requirements vary widely from county to county. In 1972, in Glacier County, 19 per cent of the residents received one form of assistance or another; in Petroleum County the figure was 1.2 per cent.⁹ Wibaux had a 1972-1973 poor fund levy of 1.92; Lake, Cascade, Silver Bow and Toole were all at 17 mills. High welfare loads are related to such factors as the presence of Indian reservations, industries or companies with declining employment, and transient populations. Even though some of the smaller rural counties have a limited resource base, they have low welfare loads because unemployed or underemployed persons have already moved to seek employment elsewhere. Thus, the proportion of poor funds to that of the general fund ranges from less than 5 per cent to more than 100 per cent, while the county average of poor fund spending to total spending is about 22 per cent.¹⁰ County capacity to provide for services varies widely, but so does demand for them.

Montana's 56 counties, therefore, exhibit significant differences in a number of basic respects--area, population and tax base--all having importance for the functioning of local government.¹¹ Some counties are much better able to handle the demands for county services than others; some counties, because of economic and social factors, have much greater demands for services than others.¹² It follows, therefore, that the review of local government will itself have a different meaning for different counties around the state.¹³

Complexion of Montana Cities and Towns

Municipalities comprise the other principal fixture of the Montana local government scene. The large influx of settlers into Montana during the first two decades of the twentieth century caused an accompanying rash of town development. By 1920, when town development tapered off, there were 110 Montana municipalities. Many towns have since been abandoned and others risen in their places. Currently there are 126 incorporated cities and towns in the state.

The location of Montana towns, like their timing, was not accidental. Many things were influential in determining where towns sprang up, the most significant probably being soil condition and topography, weather conditions, location of natural resources including water, transportation, corporate activity, and the presence of Indians (witness names such as Fort Logan, Fort Benton, Fort Shaw or Fort Peck). In eastern Montana, the railroads were the single most important determinant of town location; on the other side of the mountains, the valleys and rivers were strong influences in determining town sites.¹⁴

Economic development on either side of the mountains had reciprocal effects on town development. Growth along the old Bozeman trail in the late nineteenth century is illustrative. Many small mining communities grew up near the railroad in order to ship coal back to eastern markets and to supply the growing smelter communities in the west such as Butte, Anaconda and East Helena,¹⁵

The location of Montana cities and towns was determined principally by economic considerations. (Again, recall names like Gold Creek, Diamond City, Copperopolis, Silver City, Gypsum or Oilmont.) Although town development was an integral part of reducing the potential of the land to dollar and cents terms, the type of technology and kind of operation varied from place to place. Perhaps the most unusual example was the case of Mondak, a genuine planned community established at the point where the Missouri River and the Great Northern Railway cross the North Dakota border. The community was created in 1904 for the sole purpose of supplying liquor to thirsty North Dakotans constrained by prohibition in their state. Promoted by the Hamm's Brewing Company, the town grew as secondary activities became necessary to support saloons and liquor storage centers. It prospered until national prohibition put it out of business in the 1920's. For a while it survived as the county seat of Roosevelt, until the county center was moved to Wolf Point in 1926.¹⁶

The industries of some towns were more successful in turning profits than others, and so some towns prospered and others disappeared. At one time or another in Montana history, over 1900 places had the status of a post office,¹⁷ Most of them never achieved the size of a city or town; some that did eventually declined and have virtually disappeared over the

years. Those that succeeded often did so by adjusting to changing economic times. Shelby began in 1891 as a boxcar in a coulee--one of many station stops on the Great Northern line. It became a trading center for pioneers along the Marias River, then a cowtown in the 1890's. Wheat farmers followed at the turn of the century, but only the extensive oil discoveries in the 1920's insured its survival--to be remembered as the brawling frontier town which gained national attention by hosting the Dempsey-Gibbons heavy-weight championship.¹⁸

Even today, the potential for turning a dollar out of the land--whether the industry is tourism, mining, agricultural exchange or energy production--can result in the same kind of rapid town development that Montana experienced decades ago. The state has had a number of modified "boom and bust" towns in recent history. Towns such as Glasgow, Conrad and Libby grew quickly in response to the promise of development associated with federal spending projects.¹⁹ Colstrip looms on the horizon as a replica of early urban settlements back in the state's mining heyday.²⁰

Different geography, different resources, and different industries produced unique kinds of towns in Montana. On the eastern plains, the towns were strung out along the rail lines. The economy of the area was based on grain, sheep and cattle, and this way of life thrived on vast, unpopulated lands. In the western part of the state, lumbering and mining activities, plus agriculture, could support principal cities and small towns that were less scattered. Urban settlement was more likely here than east of the mountains.

Eastern Montana was, therefore, and largely still is, characterized by a scattering of small towns, although today it has the two largest urban

centers in the state. Western Montana, in comparison, supported at an early date numerous towns with relatively large populations and more diverse activities. There were towns on both sides of the divide, however, that achieved larger size and higher status than their sister communities. These were central cities that provided all kinds of goods and services, both necessities and luxuries, to a large market area.

Over the years, the different kinds of towns--farm towns and smelting towns, mining camps and trading centers, railheads, oil depots and grain terminals, company towns and university towns, outposts and central cities--produced different patterns of life styles. Patterns of work associations helped produce other patterns of association. Communities reflected varying reliance on outside and public sources for amenities and necessities. Consequently, people differed from one community to another in their expectations and standards for public roles and performances.

Towns, therefore, are not merely places where people come to live and work at a job, they have a public or governmental identity as well. Town governments have specific functions to perform and services to provide for residents who have sought corporate status for the specific purpose of achieving these services. Of all the communities which have existed in Montana history, only 126 cities and towns have incorporated status today.

Communities made the transition to corporate status for a number of reasons, and there are people who think that in some instances the step should not have been taken at all.²¹ The most common reason that communities incorporated was to be empowered to provide services to their residents. The service that most often prompted this action was public water supply. Up to

1915, the state legislature required incorporation before a community could operate a water system, and by that time there already were 98 incorporated towns. Most of these municipalities were small and rural, 67 per cent having less than 500 persons. It can be argued that many Montana communities now have corporate status only because of the narrow requirements of early state law. The questioning of continued corporate status for some Montana communities may still be appropriate today.

The rationale for incorporation is not always clear. Population size would seem to be an important factor, but some incorporated areas number less than 100 persons and certain unincorporated areas are larger than 5,000. In fact, there are about 40 unincorporated areas in Montana that are larger than 40 incorporated areas. This may mean that incorporation is a device to provide proprietary functions in certain areas and not a reflection of a desire for full-fledged local government. If many of Montana's population centers can get by without representative structures at the local level, then the voter review process for smaller communities might properly emphasize administrative efficiency rather than representative structure.

In 1970 Montana's 126 incorporated local governments still retained, for the most part, a rural or small town flavor. The smallest, Bear Creek, had only 31 residents. Sixty-eight of these jurisdictions, or 54 per cent, had a population of under 1,000. Most of these small communities did not exhibit signs of economic health and progress. Fifty-four, or 80 per cent, lost population between 1960 and 1970. This deterioration also followed a marked geographic pattern: forty-six, or 85 per cent, of the small communities losing population were located in eastern Montana.

Coal development in parts of eastern Montana undoubtedly will reverse this trend of population loss in some towns. Estimates of the magnitude of this population expansion vary. One analyst predicts that between 1980 and 2000, Hardin will grow by 6,200, Forsyth by 4,450 and Colstrip by 13,330 persons.²² Much of the population impact is expected in communities which are currently not incorporated. The demands placed on them may force incorporation and add to the total of 126 municipalities in the state. Whatever the exact level of coal development-related population growth, the expansion will be significant enough to place some new service burdens on small towns.

If the past record of coal development in Montana is any example, the permanence of growing coal communities may be in some doubt. The past pattern shows boom followed by stagnation and abandonment. Four major coal areas flourished in the years between 1875 and 1925 around the Bozeman, Great Falls, Red Lodge and Roundup fields. Robert A. Chadwick writes:

Smaller communities, such as Cokedale, Storrs, Chestnut, Chimney Creek, Timberline, Belt, Stockett, Sand Coulee, Bearcreek, Washoe, Klein, Aldrige, Electric and Colstrip developed as coal mining camps. Although some survive, others are all but deserted now,²³

Thus, while study commissions will be anticipating growth, governmental structures designed for today's dynamic communities may be unnecessary for ghost towns of the future.

There are some communities in the state that are experiencing rapid urbanization despite the general trend of population loss. The attendant problems that plague these cities are not much different from those experienced by fast growing areas throughout the nation. Of Montana's 126 incorporated municipalities, there were 37 that had a larger population in

1970 than in 1960. During that decade, 15 of these municipalities grew by more than 15 per cent, and three--Bozeman, Plains and Darby--exceeded 35 per cent.

Urban expansion in Montana, however, has not been confined to the area within municipal boundaries. Some of the state's most striking growth has occurred in areas just outside the major cities. The 1970 census identifies nine unincorporated places of 1,000 or more in Montana. For example, Missoula South is listed with 4,886 and Missoula West with 9,148 persons. The census figures for Missoula County and the City of Missoula give the broader picture; while the city only increased by 8.9 per cent between 1960 and 1970, the county's urban population expanded by 40.8 per cent during the same period. There is a foreboding note in this development for Montana local government--the city-oriented residents of these expanding unincorporated areas have no incorporated metropolitan government to meet their public service needs.

Montana cities and towns, therefore, are varied in terms of size, numbers, and overall complexion. This diversity among municipalities also extends to their public wealth measured in terms of taxable valuation. The difference between cities with high valuations and towns with low valuations is enormous. In 1972, for example, Bearcreek's taxable valuation was \$21,359, while Billings had a taxable valuation figure of \$57,128,322. These figures are significant since municipalities, like counties, chiefly rely on the property tax as their source of revenue.

Focusing on the high and low extremes is only one way of looking at the taxable valuations of municipalities. The different revenue conditions

of cities also can be appreciated from other perspectives. For example, in 1972, Forsyth (1,873 persons) had a taxable valuation of \$1,493,635, while Fort Benton (1,863 persons) had a taxable valuation of \$1,642,718. Cascade (714 persons) had a taxable valuation of \$368,825, while Bridger (717 persons) had a taxable valuation of \$483,313. Although nearly identical in size, Fort Benton with the larger tax base chose to raise \$54.00 per \$1,000 taxable valuation to Forsyth's \$48.00. Similarly, Bridger had the larger tax base, and it found it necessary to raise \$69.00 per 1,000 taxable valuation compared to Cascade's \$54.00.

Differences in community situations also can be seen by comparing the mill levy figures of towns with similar taxable valuations. Thus, Twin Bridges in 1972 had a taxable valuation of \$287,553 and a mill levy of 65.00, while Hysham had a taxable valuation of \$282,823 and a 1972 mill levy of 114.50. In the same fiscal year, Terry had a taxable valuation of \$807,658 and a mill levy of 46.90, while Townsend had a taxable valuation of \$889,556 and a mill levy of 90.00. Even when tax bases are similar, therefore, one municipality may still have to burden individual property owners more than another municipality in order to raise tax revenues to meet public needs. In comparing Townsend and Terry, population demands play an important role; Townsend has 1,371 persons to provide for while Terry has only 870. This explanation, however, does not hold for Twin Bridges (613 persons) and Hysham (373 persons); Hysham has about half the population, but double the mill levy. The other important explanation of differences is the presence or absence in the community of large individual or corporate property holdings which can reduce the tax load on the ordinary citizen.

Like the counties, therefore, Montana's cities and towns exhibit important differences in size, resources, and reason for existence. Economic activity has drawn different kinds of people to different settings, and the interactions of the people and activities have produced different life styles and different expectations.²⁴ Montana, for example, was a settling ground for groups of second and third generation immigrants. Scandinavians came to homesteads and to small "High-Line" farming communities. Eastern Europeans were recruited for mining and ore processing operations. People became involved in the farm and labor movements, and class differences emerged. The logging and mining industries produced a milieu in which class differences were sensitized by the clash of the IWW and the powerful companies.

The Politics of Local Governments

The political manifestations of differences in ideology have been less apparent at the local level than at the state level and in national partisan orientation.²⁵ But many towns and cities still bear the imprint of developments in their earlier periods and the political outlooks they produced. Butte and Anaconda, for example, have cleavages that can be traced to religion, ethnic origins, and class. Other cities also have identifiable derivative patterns of partisan politics. Great Falls traditionally has been a Democratic stronghold, underpinned by strong unionization among the railroad and smelter workers. Havre takes its Democratic flavor from the combination of the railroad and wheat farming environment. Set in an environment of oil and cattle ranching, and long the Republican Party's most important enclave in the state, Billings has become increasingly more

Democratic as its population has grown. One university town, Missoula, is a toss-up for the two political parties while the other, Bozeman, is still a consistent Republican supporter. Helena, a unique combination of old wealth and new professionals, has slight Republican tendencies, although--along with Bozeman and Great Falls--it has adopted the nominally nonpartisan city manager form of government.²⁶

In general, the larger state communities are more likely to be Democratic and the smaller communities remain the source of Republican strength.²⁷ The mining counties and the tier of so-called "High-Line" wheat-producing counties lying north of the Missouri River have been dependably Democratic. They are usually joined in the Democratic column by the lumber-producing counties of western Montana. The Republicans over the years have fared best in the livestock counties south of the Missouri River and in the western counties with diversified crops and irrigated farming.

Partisan differences may or may not reflect different policy emphases in different municipal and county settings. Historically, however, rural areas and urban centers have had different priorities and have for decades competed for favor in the state capital.²⁸ Rural areas do not share the same problems as urban areas, and sometimes they are unsympathetic to the pressing need to find solutions for urban problems. Issues such as planning, transportation, uncontrolled subdivision growth, and pollution control are more controversial and of greater significance in the more populated areas, especially where the urban population does not correspond to the city boundaries,

The cities have a greater tendency to look to the state and federal government for assistance and answers to their problems. In the sparse areas of the state, the county is usually more important than the municipalities at the local level, and one important issue is how to keep the state from imposing controls on the county. The state's local governmental units, therefore, differ widely in their expectations of involvement from other levels of government. This difference may be traced in part to different degrees of reliance upon individual initiative and public services by the local population,

Conclusions

Outsiders might give Montana a quick assessment and assume that the people are homogeneous and local government activities quite uniform. The thin veneer of the western way of life, however, hides substantial and significant differences among people in individual local settings. Some of these differences have important consequences for the operation of local government. The purpose of the local government review process is to determine whether a unique set of circumstances in a municipality or county suggests the adoption of a new governmental arrangement tailored to the community's own identity, needs and goals. Just as the origins of Montana's communities lay in substantially different sets of circumstances, so their futures promise diverging paths. Voter review provides the citizens themselves an opportunity to decide whether the future of each community warrants a new perspective. Chapter V of this Handbook suggests guidelines which can be applied to any community in order to evaluate how different, how unique it really is. Chapters VI, VII, and VIII then explore the

different governmental arrangements which can be tailored to the individual community characteristics which the study commissioners have identified.

FOOTNOTES

¹In one remarkable deviation from the norm, Plentywood was known in the 1920's as the only American community governed by practicing "reds." Militant socialism dominated local government in the period 1918-1926. See Charles Vindex, "Radical Rule in Montana," Montana: The Magazine of Western History, XVIII (January, 1968).

²See Jerry R. Holloron, Montana Counties on the Move (Helena: Montana Association of Counties, 1974), p. 3.

³Montana, Division of Comprehensive Health Planning, State Department of Health and Environmental Sciences, Montana County Profiles (1973), pp. 120-121.

⁴Ibid., pp.36-42.

⁵Ibid., pp. 98-102.

⁶See Montana, Twenty-Fifth Biennial Report of the Montana State Board of Equalization (Helena: Montana, State Board of Equalization, 1972), p. 91.

⁷Montana Taxpayers' Association, 1973 Montana Taxation (Helena: The Association, 1973) p. 25.

⁸Montana Counties on the move, p. 73.

⁹Montana County Profiles, p. 89.

¹⁰Montana Counties on the Move, p. 73.

¹¹As far back as 1937, two prominent observers of the Montana scene stated that "Montana counties vary greatly in area, population and wealth." Roland R. Renne and J. Wesley Hoffman, The Montana Citizen (Helena: State Publishing Company, 1937), p. 211.

¹²Conditions in different Montana counties can be explored in the following sources: United States Department of Agriculture, Montana County Profiles; Committee for Rural Development, Situation Statements, 1972; Theodore J. Wirth and Associates, Comprehensive Area-Wide Water and Sewer Plan, 1970; Montana Department of Planning and Economic Development, Montana Statistical Review. Many state departments dealing with social services have periodic reports on their functions in the various counties.

¹³See Lauren S. McKinsey and Peter Koehn, Lake County: Growth of Small Government, Occasional Papers in Local Government, Bureau of Government Research, University of Montana, forthcoming.

¹⁴John A. Alwin, Patterns of Montana Towns, 1860-1920 (Missoula: University of Montana, Master of Arts Thesis, 1972), p. 105. The following discussion of town growth in Montana is largely based on this study.

¹⁵Robert A. Chadwick, "Coal: Montana's Prosaic Treasure," Montana: The Magazine of Western History, XXII (Autumn, 1973), pp. 18-31.

¹⁶Alice Sweetman, "Mondak: Planned City of Hope Astride Montana-Dakota Border," Montana: The Magazine of Western History (Autumn, 1965), pp. 12-27.

¹⁷Roberta Carkeek Cheney, "Montana Place Names," Montana: The Magazine of Western History, XX, No. 1 (January, 1970), p. 48.

¹⁸Ibid., p. 59.

¹⁹John H. Wicks and John M. Griffing, "Impact of Libby Dam Construction on the Economy of Lincoln County, Montana,"

²⁰See Duane A. Smith, Rocky Mountain Mining Camps: The Urban Frontier. Bloomington, Indiana: The Indiana University Press, 1967.

²¹See Michael C. Nash, Community Water Problems as a Factor in Municipal Incorporation in Montana (Missoula: University of Montana, Master of Arts Thesis, 1969). The following discussion of incorporation is based on this study.

²²Donald Patterson, "Preliminary Statement of General Recommendations: Six-County Projection of Social and Municipal Service Needs Resulting from Coal Development" (Bozeman: Center for Interdisciplinary Studies, Montana State University, February, 1974), p. 38.

²³Robert A. Chadwick, "Coal: Montana's Prosaic Treasure," Montana: The Magazine of Western History, XXII (Autumn, 1973), p. 19.

²⁴Some of the flavor of the differences in life-styles in small and middle-sized Montana communities comes out in a reading of Richard W. Posten, Small Town Renaissance (New York: Harper Brothers, 1950). Most Montana communities have had some historical sketches of their growth done at one period or another.

²⁵See Thomas Payne, "Politics under the Copper Dome," in Politics in the American West, edited by Frank H. Jonas (Salt Lake City, Utah: University of Utah Press, 1969). Little has been done on the voting habits of Montanans at the local level. Payne emphasizes the "split-ticket" nature of individual voter orientations.

²⁶See James J. Lopach and Robert E. Eagle, Changing Governments in Great Falls: Transition Amid Dissent, edited by R. June Thornton, Occasional Papers in Local Government No. 6 (Missoula: Bureau of Government Research, University of Montana, May, 1975).

27Payne, "Politics under the Copper Dome," p. 227. See also Ellis Waldron, Montana Politics Since 1864 (Missoula: The Montana State University Press, 1958) for a topographical mapping of county partisan preferences.

28See, for example, Douglas Camp Chaffey, Legislative Party Leaders: A Comparative Analysis (dissertation, University of Wisconsin, 1967), University microfilms, pp. 147-157 and 354-363; and Ellis Waldron, "Montana," in Impact of Reapportionment on the Thirteen Western States, edited by Eleanore Bushnell (Salt Lake City: University of Utah Press, 1970), pp. 165-184.

CHAPTER III

THE CONSTITUTIONAL HISTORY
OF VOTER REVIEW

During the winter of 1971-72, members of the local government committee of the Montana Constitutional Convention formulated and debated the local government article of the new constitution. Two principles were central to their deliberations. First, they were aware that they were designing a key article of the constitution that would be applicable to 56 different counties and 126 separate cities and towns. Because they were drafting the fundamental law of the state, and because, as we have seen, Montana's counties and municipalities exhibit marked differences in social, economic, and geographical complexion, the committee felt that the new constitution must afford maximum flexibility to local governments.

Secondly, convention delegates believed that the new document should revitalize the critical relationship between citizens and government officials. They felt that a constitution should guarantee the representative quality of the state's local governments. Consequently, the local government committee designed an article that would make municipal and county officials accountable to their constituents.

The outstanding achievement of these men and women is that they incorporated such enduring governmental values in the state's basic law. With the approval of the new Constitution in 1972, the people of Montana went on record as saying they expect their local governments to be both responsive to the individual needs of each community and responsible to the expressed sentiment of the citizenry. The primary vehicle for realizing these goals is the visionary voter review of local government required by Article XI, Section 9.

The best single-word description of voter review is "unique." It represents a radical departure from local government practice, not only

for Montana but for the entire nation. Article XI, Section 9 reads:

(1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislators should require a review procedure once every ten years after the first election.

Some states permit their counties, cities, and towns to adopt new forms of government through a petition and referendum process. Other states allow local government units to alter their structure after a detailed analysis by a study commission and a favorable vote by the citizens. Montana is alone, however, in requiring all 126 municipalities and all 56 counties periodically to conduct an intensive governmental review. The local government story of the constitutional convention tells the reasons behind this unique measure.

Arguments on the Convention Floor

The idea of voter review of local government first appeared in Delegate Proposal No. 97 sponsored by Thomas M. Ask, an attorney from Roundup. Introduced on February 2, 1972, at the eleventh meeting of the local government committee, the language of the voter review section remained substantially intact as subsequent amendments to Proposal No. 97 were considered. Indeed, the voter review proposal received little direct opposition. The minutes of the committee's work and the Transcript of Proceedings of the entire convention¹ contain strong arguments on behalf of the measure.

Old Constitution: No Reform Stimulus

Voter review was supported by several convention delegates on the grounds that conditions in local communities around the state could be modified

by local government reform, but such change had not been forthcoming. In fact, 124 of Montana's 126 municipalities and 55 of the state's 56 counties were operating with the same forms of government at the time of the Convention. Given the diversity of communities within the state, delegates asked why governmental structures were not more varied.

Speaking on the convention floor on March 17, 1972, delegate Franklin Arness of Libby gave one reason for reform stagnation:

. . . the present form of county government tends to favor inaction. Most of the time that the county commissioners spend, whether we like it or not, or whether we are willing to admit it or not, consists not in taking action but in trying to frame decisions that avoid action. The structure of county government is designed so as to create the greatest possible inertia over the longest possible time. . . .²

A University of Montana political scientist outlined another reason for such little progress. Speaking to convention delegates, Dr. Thomas Payne warned of the dangers of freezing certain forms of government or public positions into the constitution. To do so, said Professor Payne, would be to "surrender to a small, selfish group of county officials who want to remain in the constitution. . . . and who represent a small, vested interest."³ The listing of county offices in the Constitution would merely serve the status quo; such decisions should be left to the legislature and the people. Whereas the old constitution had been a handmaiden of inaction, Dr. Payne perceived that the new one could be an instrument of reform.

Delegate Jean M. Bowman of Billings also spoke with concern about the role of local officials in thwarting change. She inquired on the convention floor how the review mechanism would be implemented:

I'm concerned about the machinery for getting this change going. Is it entirely dependent upon the leadership of the various units which wish to change or can it be instigated by citizen initiative?⁴

Subsequent floor debate cited both the frustrated efforts of local government officials to effect change and the deficiency of the old constitution in failing to require it. The dual responsibility of officials and citizens was particularly emphasized by delegate Thomas Ask who said in the review a means of activating both groups to achieve reform. These discussions finally led to clarification of the roles to be played in the review by citizens and officials. It was agreed that although both groups would have important contributions to make, the review would be first and foremost a citizen function.

Present Conditions: Need for Reform

Montana had changed considerably during the 83 years since the 1889 state constitution was written, even though governmental structures have remained much the same. This fact weighed heavily on the minds of delegates to the constitutional convention. A study by Jerry R. Holloron, staff researcher for the Local Government Committee, included this observation:

"Growing pains" are being experienced in part of the state and "shrinking pains" in much of the rest. If Montana is not yet caught up in the whirlpool of urban decay, it is being tugged by the currents. Examples are not uncommon of intracity rot and poorly planned fringe areas. . . . On the other hand, much of the rest of Montana is becoming more sparsely populated, but its government does not decrease correspondingly. The problems caused by a static or decreasing population are every bit as great as those caused by urbanization. . . .⁵

A Montana newspaper elaborated on the kinds of urban problems that concerned convention delegates. In some cities, it said, population shifts

were having an important effect on the tax base and delivery of governmental services:

Perhaps even more significant is that the bulk of the increase in urban population is taking place on city fringes, but outside city limits. City fathers contend that suburbanites are taking advantage of city streets and parks and other amenities but not paying for them.⁶

In his study for the Local Government Committee, Holloron had shown how "overlapping local governments" and "the crush of property tax bills" result from urban development on the edge of cities.⁷ And in a meeting of the convention's local government committee, Whitefish delegate Arnold Jacobsen vividly detailed the problems stemming from many governments, problems that indicated the direction of needed reform:

Why is it essential that Flathead County have a treasurer and three city treasurers to disburse funds, when in fact only the county treasurer collects property tax funds? . . .

Why do we have to maintain four jails in a 15-mile triangle and five communication systems in the same area? . . .

Why the triplication in construction and maintaining our city streets, county roads, and state highways? . . .

Why the dozen different statutes, each basically the same but each different in details in school, city, county, and state election requirements?⁸

Delegate Mae Nan Robinson of Missoula called attention to the problems of areas with declining populations. As with urban problems, she felt that rural problems would not be solved unless an opportunity for reform was created. She continued:

I think this is a real essential part of the revision of local government to allow these areas where the population is decreasing to, every ten years or periodically, look at their form of government in relation

to the number of people that they have, because this is changing, and the need for the governmental services that they need to provide. . . . a great many of them are rapidly decreasing and will soon come to the point where they may--will like to be unincorporated.⁹

In light of such significant differences in community needs and problems, convention delegates became convinced that the state's constitution should not force local governments into rigid structural patterns. The local government sections of the constitution should simply express the fundamental principles upon which local governments would be based. Specific details as to form, powers, and operations should be left to other devices. Given the changing conditions in local governments, the legislature, local officials, and local residents would be better situated to make necessary adjustments. This spirit of flexibility, consequently, came to be the heart of the local government article and of voter review.

New Constitution: A Start to Reform

Convention delegates were then faced with something of a dilemma. The condition of local government in the state indicated that some stimulus to reform was needed; yet the new constitution should not be heavy-handed in requiring it. Meaningful reform would have to be a genuine response by local citizens to their particular set of problems and needs. Voter review of local government provided an acceptable way out of this dilemma; it required all counties and municipalities to consider for themselves the appropriateness of reform.

The mandated review, therefore, was seen only as a beginning on the road to reform. But the importance of the mandatory aspect of the review was cited by several delegates. It would, they said, ensure an opportunity for reform if reform were desired, and provide the essential nudge to

overcome the inertia fostered by the present structure of local government. Nevertheless, the delegates were quite explicit in stating that only the review--and not necessarily change--was to be mandated by this article of the new constitution.

The spirit of the final review proposal is probably best set forth in the majority report of the Local Government Committee. This statement clears up any possible conflict between mandated review and local government flexibility in the review process. The report reads:

This proposal tends to work with the existing local government structure of cities, towns, and counties and seeks to achieve improvement by encouraging experimentation in local government powers and form.¹⁰

The opportunity to experiment with local government forms is thus established by the constitution, but the studying and deciding is left to the localities because they are best able to deal with local problems. The report goes on to suggest, however, that the approach used by one unit might be found useful by other communities in the state.

Arguments in Opposition

Despite the fact that review of local government could be construed as threatening the established order in many communities, there were relatively few opposing arguments. Their substance, furthermore, was thoughtful and constructive.

Miles Romney of Hamilton moved to delete the review section from the proposed local government article on March 17, 1972, the forty-eighth day of the convention. Not opposed to reform at the local level, he cited Missoula's experience with various government forms to support his contention that there was already ample opportunity for change. It was also

charged by delegates Mahoney of Clancy and Cox of Billings that imposition of review by the state every ten years would turn the democratic process upside down. These criticisms were important because they placed on the advocates of review--and on the Montana Legislature which was to implement it later--the responsibility for making the review, in practice, a real expression of grassroots sentiment. Otherwise, review of local government would be a state-imposed procedure rather than a response to locally-determined problems and needs.

The minority report of the Local Government Committee was the work of Libby delegate Franklin Arness. The alternative he offered was to mandate a single level of local government that would encompass all of the present units of local government in an area--for example, county, cities, towns, special service districts, and school districts. The new area government would have plenary local government authority and the legislature would provide for uniformity of jurisdiction and operation. The committee majority opposed Delegate Arness' proposal on two counts. First, they felt that such a narrow proposal did not properly belong in the constitution because specific governmental arrangements should be left to the judgment of the legislature and/or the people of a local community. And, secondly, it was argued that the minority proposal could be achieved where it was deemed appropriate either through the review of local government and/or the self-government charter writing procedure. Delegates did not want the new constitution to confine localities to any set governmental structure.

The Review of Local Government Proposal

The challenge facing the constitutional convention's local government

committee was well expressed by the committee's chairman, Oscar L. Anderson of Sidney. In an article written for the Great Falls Tribune, Anderson said:

If local government properly can be termed the "seedbed of democracy," then convention delegates face the difficult task of preparing the soil in which strong, imaginative and responsive local government units can function.¹¹

Much of the success of the committee in realizing its goal can be attributed to its incorporation of the voter review section in the local government article. Voter review is a process specifically engineered to secure strong, flexible, and accountable local government units.

Constitutional convention delegates hoped that voter review would serve two ends. The review would be an opportunity for local government reform, but change would not be mandatory. Any reform that came about would ultimately reflect the ideas of the community's citizens and carry the approval of the area's voters. Secondly, voter review would involve citizens directly in the making of fundamental decisions about the adequacy of their present municipal and county governments. Even if no reform resulted from the review process, it was felt that the benefit of voter education and participation would justify the effort and expense.

Citizen Involvement

The review proposal, therefore, anticipated that citizens would be given a major role to play in carrying out the studies of local government. Delegate Thomas Ask, the author of the review proposal, said that citizens "Would make a study for their government, and we assume they would work with the present government officials, hold hearings that various citizens in the community could attend, and eventually they'd come up with an alternative or optional form of government. . . ."12 Dorothy Eck, a delegate from

Bozeman, also viewed the local government study as a joint effort of citizens and local officials. It would, she said, empower the legislature to direct local government officials to involve citizens in the process of making changes, changes that would enable those officials to deal with local problems more effectively. Citizen involvement would characterize the review process from beginning to end. The referendum on the reform proposal, in particular, would be the province of the area's citizens:

An overriding consideration is that local voters would be the final judges of whether the alternative proposed really would be a better form of government than that in effect at the time of the election.¹³

That citizen involvement is the unique feature of the review proposal was borne out in the remarks of Montana citizens after the new constitution was unveiled. For example, Dan Mizner, executive director of the Montana League of Cities and Towns, observed that the review process would involve people in their local government, permit them to make sure it was doing its job, and provide for periodic review of that government by the people. His remarks were quite direct: "If they like it, they can keep it. If they don't, they can change to another type of government."¹⁴

The Legislature's Role

The voter review proposal, as it finally appears in the Montana Constitution, states that qualified voters of a local government unit will decide to adopt or reject "one alternative form of government" that is submitted for their consideration. Section 3 of the local government article gives the Montana Legislature the responsibility of providing optional forms of local government for consideration and adoption by citizens of municipalities and counties. Convention delegates anticipated that the legislature would make available a sufficient variety of forms to insure

realization of the constitution's goal of flexibility in local government reform.

Virginia Blend of Great Falls gave clear expression to this purpose on the forty-seventh day of Convention proceedings. "The proposal," she said, "aims at creating the widest possible array of local government forms so that local structure may be tailored to local needs."¹⁵ These options, according to Delegate Blend, would fit the local situation, "whether in a town of twenty-five people or city of eighty thousand, whether in a county of under five hundred or a county of eighty or ninety thousand."¹⁶

Delegate Thomas Ask also voiced the expectation that:

Section three's straight forward direction to the legislature to provide optional and alternative forms of government will result in a greatly expanded offering to the local government units in Montana. The possibilities that could be provided under section three are great.¹⁷

The best way for the legislature to approach its task, in Delegate Ask's view, was to borrow New Jersey's "cafeteria style form of local government options under which a local government may choose different alternatives within a form of government offered by the legislature."¹⁸ Delegate Ask stated that one reason for Section 3 of the local government article was to allow a flexible cafeteria selection in Montana, too. Proceeding in this fashion, Montana's legislature would provide an array of governmental forms, and any one of these could be amended by residents during the review process. For example, "the legislature could offer the mayor-council form of government, but leave to the locality the question of whether to elect or appoint a city treasurer, a police judge, or other city officers."¹⁹

Even though the review proposal assigned such a critical role in local government reform to the state legislature, convention delegates believed that legislators would carry out their task so that local needs would not be obstructed by state level inaction or lack of concern. Thus, the drafters of the local government article did not hesitate to grant the legislature "authority to meet the rapidly shifting governmental needs of vastly different units of local government."²⁰

The Review Referendum

The Constitutional Convention delegates realized that the manner in which the legislature chose to provide optional forms of local government obviously would have a major impact on the scope of the deliberations of a local government study commission. A commission's study efforts and final decision concerning an alternative form of government would, in turn, determine the content of the review question that a community's voters ultimately would approve. Therefore, the effectiveness of this key review act--the referendum--would depend greatly on the range of alternative forms the legislature made available and on the nature of the study commission's procedures and deliberations. Convention delegates were in agreement that citizens must be given an opportunity to change their form of government by voting in the referendum following the review.

In Delegate Thomas Ask's view, a commission made up of local citizens would study their present form of government intensively for a period of months and then propose the best plan for the county or city or town. The plan that grew out of the study process would be "an alternative or optional form of government," and "this alternative type of government would be submitted to the people at the next election. . . ."²¹

The local government committee viewed procedures for the local study commission as being rather uncomplicated. The commission "might simply take an alternative form authorized by the legislature and recommend that it be put on the ballot locally,"²² After intensive and thorough analysis, the study commission's final recommendation would be decisive. It would determine the degree of change that citizens could accomplish with their vote.

The local government committee emphasized the reform effect of this decision by local voters:

The key provision is that residents of each unit must have an opportunity to vote on whether to adopt an alternative form or retain their present form.²³

As Delegate Thomas Ask pointed out, the final and crucial act would be taken by "the people...all they'd have to do is vote whether they wanted this new type of government--if they voted no, they'd go back to their old form."²⁴ The key factor of the required balloting would be that a choice was represented to the voters.

This type of voter involvement was established as central to the review process. The review referendum was seen as the critical point of participation, because here citizens would vote on the fundamental question of a community's future governmental structure. Convention delegates, therefore, attempted to guarantee that this review vote by citizens would be meaningful in terms of the changes it could effect,

Self-Government Charter Writing

The local government article of the Montana Constitution also contains a section which authorizes local government units to write a self-government charter. In some ways, the self-government authorization contained in Section

5 is very similar to the voter review section. A charter includes a form of government, but in addition to this component it also authorizes the exercise of self-government powers. Delegate Lucile Speer of Missoula spoke of the nature of a charter to the assembled members of the Constitutional Convention:

There are two important elements in a local government charter, the structure or form of government and the powers of local government, and these two elements are clearly related, in fact they are almost inseparable.²⁵

Charter writing was included in the local government article to give each of the state's local government units maximum flexibility in designing a governmental structure to fit its specific needs. Thus, counties and municipalities adopting a form of government provided by the legislature would be limited by the scope of available optional forms. However, a community electing to write its own charter would be limited only by the capacity of its collective imagination. According to Delegate Speer, the local government committee believed that the charter framing power offered the greatest range of forms that could be made available to local governments. It would allow Montana communities to tailor their governments to accommodate great variations in size, needs and interests.

The local government committee had two particular reasons for allowing residents of counties and municipalities to frame and adopt their own governmental structure in a self-government charter. First, it would allow local people to become directly involved in designing their community's government to fit their own situation. Secondly, charter writing was seen as a means of coping with the possibility of a "recalcitrant legislature which refuses to provide optional forms of government,"²⁶

Besides permitting a community-designed form of government, a self-government charter also authorizes a local government unit to exercise all powers not prohibited by the constitution, by law, or by charter. Under the old state constitution, it had been assumed that a local government lacked powers unless they had been specifically authorized by the legislature. But, a charter writing community can operate under the assumption that it can exercise any power not specifically prohibited by state and federal law. The local government committee authorized local government units to adopt self-government powers either by writing a charter, or by approving a form of government with self-government powers attached--as provided by the legislature.

The charter writing authorization was derived from the same two principles that underpinned the review of local government section: accountability and flexibility. The charter writing section gave both of these ideas full expression. In taking advantage of the complete flexibility allowed in designing its governmental form, a community could attempt to make its government responsive to its citizens and their needs. The debate on the convention floor centered more on the extent of this flexibility and the rationale for extending it to local units than it did on the concept and the desirability of charter writing itself.

Some delegates expressed fears that charter-writing communities would possess unlimited power to create havoc with the status quo. Delegates Blaylock of Laurel and Romney of Hamilton raised the possibility that individual cities could enact right-to-work laws, levy sales taxes, and legalize gambling, drug sales, and prostitution. They sought to determine what could stop them.

In response, Franklin Arness maintained that self-government charters would not result in a "situation of little city states."²⁷ The legislature would retain final say over exercise of self-government powers. Even after a charter was written, he said, the "legislature could limit charters, having granted them."²⁸ Arness felt that controversy over limiting the activities of self-government units should be fought out in Helena.

Delegate Lucile Speer spoke of other limitations on charter writing besides the legislature's potential prohibition on the exercise of self-government powers. The legislature could exercise control over the procedures used to write a charter. She also foresaw that it might establish restrictions in procedures for selecting a charter writing commission and in designating the communities where such an exercise could be initiated. For example:

. . . , the legislature might determine that only those units or combination of units with more than ten thousand population could have charter writing power. . . . Or the legislature could specify the number of members of the charter writing commission and how they are to be selected, whether elected or appointed and so on.²⁹

The other limiting factor that Delegate Speer cited was the citizenry--implying that their collective common sense would not allow a local government to go its own way down the path to ill-conceived innovation. Thus, the delegates believed that no charter or charter amendment should become effective unless approved by a majority of persons voting on the question.

Citizens of a local government unit can through charter-writing, design their own municipal or county form of government and choose to exercise any governmental powers not specifically denied them. Charter writing was the exemplary expression of local government flexibility that convention

delegates sought to establish. They could write:

. . . the real news in the proposal is its incorporation of new devices to make local governments more responsive and responsible. Totally new provisions are added allowing local citizens to design their own form of local government, to increase local authority and responsibility and to end needless duplication of local services.³⁰

A New Era of Local Government

The 1972 Montana Constitution provides the basis for a new era of flexibility and accountability for the citizens and officials of the state's counties and municipalities. Two local government reform processes are contained in the constitution's local government article: voter review and charter writing. Voter review is both novel to Montana and unique in the nation. Charter writing also owes its introduction in Montana to the new constitution, although it is a common occurrence in other states. It is possible that the scope of the voter review process anticipated by the Constitutional Convention delegates could make the implementation and use of the charter writing process less urgent. However, the delegates felt that it was necessary to provide for both reform processes.

In conclusion, the turn-around in reform momentum created by the constitutional convention was courageous, although beset with risks. Voter review of local government, coupled with charter writing, characterized the local government article of the new constitution as a doubly reform-oriented document.

FOOTNOTES

¹Montana Constitutional Convention, Transcript of Proceedings, Twelve Volumes (Helena: State Capitol, Convention Hall, 1972).

²Montana Constitutional Convention, Transcript of Proceedings, p. 7804.

³Missoulain, January 29, 1972.

⁴Montana Constitutional Convention, Transcript of Proceedings, p. 7688.

⁵Jerry R. Holloron, Local Government. Constitutional Convention Study No. 16 (Helena: Montana Constitutional Convention Commission, 1971) p. 17.

⁶Missoulain, October 17, 1971.

⁷Holloron, Local Government, p. 17.

⁸Great Falls Tribune, January 21, 1972.

⁹Montana Constitutional Convention, Transcript of Proceedings, p. 7818.

¹⁰Local Government Committee, Oscar L. Anderson, Chairman and Virginia H. Blend, Vice Chairman, Local Government Committee Proposal No. XI (Helena: Montana Constitutional Convention, February 19, 1972) p. 1.

¹¹Great Falls Tribune, January 9, 1972.

¹²Montana Constitutional Convention, Transcript of Proceedings, p. 7800.

¹³Local Government Committee, Committee Proposal No. XI, p. 32.

¹⁴Great Falls Tribune, March 21, 1972.

¹⁵Montana Constitutional Convention, Transcript of Proceedings, p. 7663.

¹⁶Ibid., p. 7666.

¹⁷Ibid., p. 7675-7676.

¹⁸Ibid., p. 7676.

¹⁹Ibid.

²⁰Ibid.

²¹Ibid., p. 7800

²²Montana Constitutional Convention Local Government Committee, "Majority Report Draft" (Helena: Montana Constitutional Convention, February 15, 1972) p. 25.

²³Local Government Committee, Committee Proposal No. XI, p. 31.

²⁴Montana Constitutional Convention, Transcript of Proceedings, p. 7800.

²⁵Ibid., p. 7702.

²⁶Local Government Committee, Committee Proposal No. XI, p. 25.

²⁷Ibid., p. 7722.

²⁸Ibid., p. 7731.

²⁹Ibid., pp. 7703-7704.

³⁰Local Government Committee, Committee Proposal No. XI, p. 8.

CHAPTER IV

OTHER STATES' EXPERIENCES: SOME REFORM LESSONS

Local government reform, as permitted by the 1972 Montana Constitution, is not new--but it also is not common. In the instances where reform has been attempted, there appear to be patterns in the events that have accompanied successful and unsuccessful movements for reorganizing municipal and county governments. These repeated conditions of success and failure can serve as lessons for Montana communities that are assessing the adequacy of their local governments during the voter review process. As we will see, the reform experiences of other states cannot serve as exact models for Montana situations. But reform measures that have achieved the objectives of their sponsors, or that have resulted in unexpected benefits, may greatly interest Montana local study commissions. The various approaches to reform, moreover, can instruct Montanans in some proven ways of actually bringing about reform--and warn of some common reasons for the rejection of reorganization proposals.

Conditions of success and failure fall into two categories. Aspects of both the reform proposal and of the entire reform process have been cited as factors determining the outcome of a reorganization movement. Even though many characteristics of a proposal are tied directly to the situation in a particular community, there are some critical features that can have wide application. The same observation is true for the reform process: there exists sufficient flexibility in the Montana voter review process to apply the procedural knowledge acquired from study of other states' experiences.

Success and the Reform Proposal

The first set of success factors has to do with the nature of the

reform proposal itself. Some communities have discovered that voter interest and support can be readily engendered if the reform proposal addresses a concrete, easily-identifiable community problem. For example, city-county consolidation came to four communities in Tidewater, Virginia, following annexation controversies. A study of these movements concluded that the preceeding disputes gave the merger rationale considerable credibility.¹ A similar situation existed in Nashville, Tennessee, when voters adopted a city-county consolidation proposal; success was judged to be due primarily to an annexation crisis and a threat by the city to place a wheel tax on county residents living outside of the city's boundaries.² In Montana, the Great Falls campaign to replace the old mayor-council form of government with a commission-manager form owed much of its success to the well publicized fiscal problems of the city.³

These examples of reform proposals addressing specific community problems are vivid illustrations of a more basic reform axiom: local government reform should be tailored to fit the precise needs of each county and municipality. As a study of governmental reorganization in Baton Rouge concludes, "every attempt to solve a metropolitan problem has to take account of unique features in the particular community. . . ."⁴ No "best" form of government, therefore, can be prescribed that would prove successful for all communities for all time. This was recognized in Minneapolis and St. Paul where the twin cities' Metropolitan Council was established to meet the area's special situation. As such, it was "little influenced by other urban models or political science prescriptions."⁵ The Metropolitan Council managed to inject regional policy considerations into the program decisions

of the departments and agencies of its members,

A local government reform proposal that does not consist of a detailed "impact statement" concerning recognizable community problems probably has a bleak outlook. This is the case because an abstract plan, however well intentioned, most likely will not attract sufficient attention and support for success. An operating premise of study commissioners must be that "it is much more difficult to win voter approval of a charter than to defeat such a document."⁶ Reform experiences in other states clearly demonstrate that the old battle cries of "lower costs" and "efficient operations" will not, by themselves, bring forth much demand for change. Reform must represent something personal and immediate to a majority of the voters.

It is as unrealistic to expect that reform will appear in full bloom as it is to suggest that any single approach will serve all communities equally well. A reorganization proposal, therefore, will not be doomed to defeat merely because it fails to address all of an area's problems. For purposes of accomplishing both adoption and reform, it would seem to be enough if the study commission's recommendation makes a good start on the road to necessary change. In the long run, moderate change could prove to be of greater consequence because later reform can build on initial success. This kind of step-by-step reform occurred in Indianapolis and ultimately resulted in the area's own brand of "Unigov." According to one source, "by 1968 . . . the Indianapolis metropolitan community had taken major steps, one function at a time, to adjust the territorial base of most of the important functions of local government to patterns which were thought to come much closer to the economic and social realities of the metropolitan

region,"⁷ The Montana review of local government is particularly amenable to this kind of sequential reform because the process will be repeated every ten years.

If successful reform is usually identified with a piecemeal approach, then it will be found that moderation is the main characteristic of a reform proposal that has high potential for adoption. The moderation inherent in each reform step, rather than the step-by-step approach itself, would seem to be the key factor of success. In Tidewater, Virginia, success was attributed partially to the fact that the merger plans presented to voters were simple, uncluttered, and easily understood.⁸ The recommended changes were in no way experimental or radical; they "made as few changes in governmental structure and policy as possible."⁹ In other cities, the outcome has been reversed. Los Angeles charter reform met defeat twice, not only because the study commission "included some extremely controversial provisions" in the document, but also because there were "too many changes on the ballot at one time."¹⁰ Similarly, in Detroit, charter reform was thwarted at the polls because recommendations that would have substantially opened up governmental activities to citizens and greatly enlarged the social responsibilities of city government were judged to be too radical.¹¹

Another situation can be considered, however, in which a study commission decides that a comprehensive, far-reaching reorganization proposal should receive its endorsement. Commission members could conclude that adoption of a mild proposal would not solve pressing local problems. Values other than compromise and moderation might, in this case, seem to be more important. For example, public informational and educational benefits resulting from the commission's recommendation might be more

highly valued than the adoption of the proposal. Adoption could be put off until the next mandated review ten years hence, or some other time. In doing this, a study commission would be rejecting possible but inconsequential reform in favor of promoting understanding and acceptance of more meaningful reform at a later date,

How Some Reform Proposals Have Worked Out

Montana residents undoubtedly will be interested in how certain local government reforms have actually worked out in other states. Compared to studies of reform attempts, there have been relatively few detailed assessments of the strengths and weaknesses of restructured local governments in operation. This research void has been pointed out in the past, and the general and abstract analysis that forms of government receive has been decried.¹² Lacking rigorous findings upon which to base judgments, criticisms, or counter statements, debaters of the suitability of various governmental forms often heavily rely on ideological bent, personal preference, or political advantage for their rationale.

There is another reason why this valuable information concerning the operation of restructured governments is not readily available. Local government reform literature and various reform episodes have emphasized that a reorganization proposal must be tailored to fit the unique conditions of each community. It follows, therefore, that there has been understandable reluctance on the part of reform advocates to push for adoption of a reorganization scheme that has been put into practice elsewhere. This situation has been enhanced by--and may, in effect, be responsible for--the small amount of comparative local government research with respect to forms,

Consequently, the disposition of reformers to break new trails has contributed to a lack of reliable and informative guides.

Studies do exist, of course, that indirectly evaluate the effect and merit of certain changes. Restructured governments are most often measured against the reform goals of accountability, accessibility, and economy. One research objective has been to attempt to associate achievement of these goals with identifiable and reliable variables. Some lessons can be passed on to Montana citizens from these studies.

A few post-reform analyses have concluded that governmental restructuring made local officials more accountable. This seems to have happened in Indianapolis because strong powers were concentrated in the chief executive's office which was highly visible to voters. Political control of local government was enhanced because "the mayor is chief executive in far greater degree than ever before."¹³ A whole new political community was created in Marian County, Indiana, largely because the key public responsibilities of their officials were easily identifiable by citizens. In Baton Rouge, adoption of a strong city-county executive had similar results. Unified and strong executive control allowed systematized, coordinated administration of major local government functions. As a consequence, citizens acquired a stronger sense of local identity and came to recognize the new system as "the government upon which responsibility could be fixed."¹⁴

Easy access to local officials is another local government criterion that is used to judge the success or failure of reform proposals. One researcher looked at Toronto, Nashville, and Miami to see how various kinds of local government mergers affected citizen access to public decision-

making. This study concluded that "the particular kind of formal governmental structure does make a difference in the ability of people to fix responsibility. . . ,"¹⁵ By making specific comparisons, it was discovered that access was clearly easier in Nashville, with its single metropolitan government for the entire city and county area; slightly easier in Miami, where a loosely consolidated form of government was in use; and slightly more difficult in Toronto, which was served by a metropolitan federation of governments.

Cost of government is a major concern of the average citizen. Consequently, increased economy in governmental operations is a frequent objective of local government reform. This concern underlies such expressions as "duplication of services," "consolidation of positions," and "strong administrative controls." Movements to restructure local government frequently encounter the question, "Will this result in higher or lower taxes?" A number of reform instances have supplied data on which a tentative answer can be based.

City-county consolidation in Louisiana's Baton Rouge area succeeded in holding costs of government down. According to the findings of one study:

. . . , expenditures per capita (in comparable dollars) were greater after consolidation than they were before. . . . The higher costs, however, cannot be attributed to the consolidation but rather to the dynamic growth . . . of the local economy, Nevertheless, the increase in expenditures would probably have been more pronounced without consolidation and the benefits derived from coordination of local government services would have been lost.¹⁶

In the Minneapolis-St. Paul area, the Metropolitan Council determined the policies for the operating and implementing government service agencies

in a 3,000 square mile region. It appears that centralized decision-making in the seven county area has modified extremes in service costs and service levels among suburban areas. Specifically, policy successes have been evident in the following areas: regional sewerage system; adoption of a regional airport plan; adoption of a regional transportation plan; adoption of a regional public housing plan; and improved service with respect to buses, water pollution, and garbage disposal. In terms of cost, economies of scale have been realized in the areas of health, sewer, and sanitation services. And, most importantly, extremes in service costs between suburbs were reduced, as well as disparities in service levels. Higher public budgets, however, accompanied these benefits.¹⁷

There is some evidence in Montana that governmental restructuring can lead to cost savings. In 1942, Petroleum County voters adopted the county-manager form of government. It was at that time, and still is, the only Montana county operating under this system. Professor Roland R. Renne of Montana State University found that use of this form of government got the county out of serious financial difficulties. In 1957, Dr. Renne said:

Savings experienced under the manager-plan in Petroleum County and observation and study over a period of many years lead to the conclusion that it would be possible to save between \$8 million and \$10 million annually in the costs of Montana county government by the adoption of the businesslike, efficient methods characteristic of the manager plan.¹⁸

The brief experience of the city of Great Falls with the commission-manager form of government has been cited in the same manner. Early in 1973, Great Falls voters rejected their mayor-council system. This action was taken while the incumbent city government was experiencing a fiscal

crisis of major proportions.¹⁹ On the first anniversary of the new government, the Great Falls Tribune claimed that the manager system had been successful in restoring fiscal integrity to the city:

It can be safely said the city has moved ahead during the year. . . . the city has benefitted through more efficient and economical handling of its affairs. . . . along business lines.²⁰

These accounts of experience with restructured local governments are more in the nature of anecdotes than considered judgments. It is safe to say, however, that some communities seem to have derived promised benefits from reform efforts. Montana local study commissions certainly will find such examples interesting, even if not conclusive, for they indicate that structural changes seem to have made a difference for some local governments.

The reform proposal itself, however, will not be sufficient in most instances to assure adoption. Such adequacy in the study commission's recommendation is unlikely unless a community is threatened by a problem of crisis proportions and the reform measure clearly attacks that problem directly.

In communities where local governments generally enjoy good reputations and where services are thought to be efficient and effective, any such change would probably be considered radical and totally unnecessary. At most, only a moderate proposal would stand a chance of being adopted, despite the study commission's considered assessment of the need for reform. Other states' local government experiences illustrate that the reform process, especially in this kind of situation, is far more critical to reform success than the substance of the proposal itself. The next section will discuss some procedural pointers from Montana's sister states.

Success and the Reform Process

Local government reform has been an infrequent occurrence in Montana. This was one reason why delegates to the Montana Constitutional Convention placed the voter review requirement in the new constitution. The review procedure does not force change, but it mandates that an opportunity for reform be provided. The chance to adopt a new governmental form is the important thing; how this opportunity is used will determine to a large degree the outcome of the review process in Montana communities. Lessons can be learned from other states' local government reform experiences that will help Montanans bring meaningful change to their communities through the review procedure.

No other state has had experience with a local government reform process as extensive as the one which Montana has just begun. However, a 1972 Pennsylvania law enables every unit of local government in the state to adopt either an optional plan of government or a home rule charter. Unlike Montana's mandatory process, Pennsylvania communities can enter into reform deliberations at their discretion. By November 1974, 40 reorganization proposals had been adopted and 41 had been defeated in that state's local communities. Numerous other cities and counties in the United States at various times have attempted to restructure their governments and assume new powers. Whether or not reform resulted, the stories of both success and failure contain valuable hints on how best to conduct a reform movement. These lessons can be divided into three categories: designing the reform proposal; campaigning for its adoption, and implementing the reform plan if voters accepted it.

Designing Local Government Reform

The designing stage of the reform process is particularly critical to the ultimate fate of the study commission's recommendation. Local government reform has the potential for changing established work patterns, threatening economic security, and altering the daily habits of many individuals and groups. The natural reaction of those interests to the review process will most likely be negative. It becomes very important, therefore, that the deliberation phase of the study commission's work be kept open to the opinions and needs of all interested individuals and groups. Receptiveness to a broad range of suggestions will allow public opinion to be heard and incorporated and many separate interests to be accommodated in the reform proposal. Failure to achieve a working consensus on the main items of the plan might result in the vigorous--and possible fatal--opposition of major interest groups during the campaign for its adoption.

Pennsylvania's short experience with its new local government reform process substantiates this argument. By November 5, 1974, 118 Pennsylvania localities--including 14 of the states 66 counties--had elected local government study commissions. Reflecting on his state's experience with these study commissions, the Executive Deputy Secretary of the Pennsylvania Department of Community Affairs said that the keys to successful local government reform activity are "experimentation" and "flexibility."²¹ An open approach to designing a reform proposal will prompt broad participation in the process. Diversity of involvement in the early stages of review may, in turn, evoke and encourage experimentation.

The goals of openness and experimentation can sometimes conflict. A broad representation of interests in the review process may lead to a considerable modification of group goals. Pennsylvania discovered, for example, that reform activity concerning local government forms and charters has often come to rest on a broad "consensus" position.²² A study of attempted city-county consolidation in Nashville, Tennessee, also found that compromise is a necessary technique in formulating a reform proposal.²³ Willingness to compromise was cited again as an important success factor of city-county merger in Baton Rouge.²⁴ These observations on the importance of compromise often are the other side of the local government reform coin. Compromise in the study process may be related to moderation in the final reform proposal--if participating interests have--or are perceived to have--equal power bases. Such moderation would resemble the national legislative process in the United States Congress. The compromise and mutual adjustment that is characteristic of our lawmakers normally results in cautious rather than experimental statutes. Representation of many interests dictates this outcome.

This comparison with the legislative process sheds more light on the type of process the review should be. It should not only allow a consensus to emerge, but should also facilitate participation by certain interests. The Pennsylvania experience shows that citizen involvement is essential because "the foundation of a good government is an informed electorate."²⁵ Voters tend to reject out of hand a reform proposal that means nothing to them personally.

Local government officials and employees constitute another key category of participants whose involvement in the designing stage of the

reform proposal is highly desirable. The importance of the contribution of top officials in the movement for "Unigov" in Indianapolis is illustrated by the following statement, typical of many past reform comments:

"Intangible and impossible to measure, but difficult to overemphasize, was the emergence of dynamic leadership exemplified in the personalities of Mayor Richard Lugar and Republican County Chairman Keith Bulen."²⁶

Defeat of local government reform proposals, on the other hand, has been attributed in part to failure to involve officials. Charter reform failed twice in Los Angeles, partly because the involvement and support of Mayor Sam Yorty and other city officials were not secured.²⁷ In Detroit, "the impact of statements by public officials . . . was a highly significant factor in the defeat" of a recent charter reform proposal.²⁸ Similarly, rejection of city-county consolidation in Nashville, Tennessee has been interpreted as resulting from failure to accommodate local officials in the merger plan; victory "would have necessitated some small compromises and a few 'deals' to insure the small politician of some 'place in the sun' under the new government." The regularity of failure to achieve reform when official support is lacking has led one student of local government to observe that support will not necessarily insure victory, but "absence of such support will virtually guarantee . . . defeat."³⁰

Another important aspect of the designing phase that has some bearing on eventual reform success is the supply of expert help. One readily available source of local government specialists is the array of incumbent officials and employees. Tapping this fund of experience and knowledge will serve two ends. The resulting study will tend to be practical--grounded in first hand experience of community needs and the adequacy of prior

governmental attempts to meet them. In addition, utilization of officials and employees in the study phase could quiet any fears of arbitrary treatment of their interests in the reform process.³¹

Local officials can make substantial contributions in the designing stage of the review process which might be especially valuable if the commission decides to write a self-government charter. Local officials, especially the county attorney, can be asked to identify new areas of power with which the governmental unit should be concerned and to help fashion a new form of government that fits the community's needs. Regardless of the scope of their involvement in the work of any study commission, there are some basic questions that local government officials probably would want to see considered so that the transition and the new government operate smoothly. For example, officials will be concerned about tasks they are responsible for and how those tasks will be handled under the new form. They will want to know whether a merit system is being contemplated and whether pension rights will be affected by governmental reorganization. The departmental organization, lines of reporting, and degree of official accountability under the new form are also items that will interest them. These are all matters that affect their present jobs and are, therefore, of critical importance to them.

Besides this kind of involvement in the designing stage, local officials will affect the work of the study commission by decisions concerning the commission's budget, supporting services, work facilities, and membership if vacancies occur. Officials could work real hardships on the study commissions by severely limiting their resources. On the other hand, officials could ensure that lack of supplies and other needs do not hamper the

commission's work.

The study commission also has the option of going outside the available body of local officials to retain consultants to assist in putting together the reform plan. Experiences in other states suggest that "experts" (who might also be labeled "outsiders") could constitute a built-in liability for the commission's recommendation. These consultants have been faulted because their advice was not based on sufficient personal knowledge of a community's needs, history, and personalities. In fact, the use of consultants who failed to appreciate local politics has in some instances been a major campaign issue raised by a plan's opponents. In Nashville, the advice of such persons "tended to be too theoretical and not adaptable to the local situation."³² But when consultants were used who possessed a full appreciation of local politics and problems, the situation in Nashville reversed itself. Reliance on consultants with this added capacity came to be "important in terms of the rather realistic study that was developed, the relatively easy massing of top community leadership behind the proposed program, and the overcoming of the many political barriers that arise naturally in the process of implementation."³³

Campaigning for Local Government Reform

The campaign stage of the reform process, like the designing phase, has many steps that can be carried out in a manner that either benefits or detracts from the study commission's reform recommendation. The campaign may become a second battle ground for individuals and groups interested in the nature and fate of the study commission's proposal. Having achieved their goals or failed in their aims during the study process, these interests could use the campaign as an opportunity to recoup their losses or retain

their advantage. The entire campaign effort, consequently, could be reduced to repeated action and counteraction by the opposing forces. Conflict is likely to be central to the campaign phase. Therefore, it cannot realistically be approached solely as a public information chore or as a routine undertaking of good government advocates. In Montana's local government review, the campaign stage will be as crucial as the design stage.

Because there is bound to be disagreement on the study commission's recommendation, the campaign for and against its adoption will be a political event. Reform advocates who fail to recognize this fact will have a difficult time winning voter approval. Studies of local government reform movements repeatedly make this point. In four successful city-county mergers between 1952 and 1963 in Tidewater, Virginia, "the employment of a practical political approach to consolidation by established political leaders was among the principal reasons, if not indeed the prime reason, that merger came to Tidewater."³⁴

The practical political approach that worked so well in Virginia amounted to recognition of and communication with the various elements of the community concerning the reform proposal. The importance of such an approach was twice seen in Nashville. One explanation of the 1958 vote was that "the failure of the proponents of the plan was a failure to communicate with over half of the population."³⁵ But city-county consolidation was adopted in Nashville in 1962 primarily because of extensive voter contact through "an effective vote-canvassing organization,"³⁶

An effective campaign for local government reform will recognize the difficulty of gaining the attention and understanding of a disinterested electorate. The first (unsuccessful) Nashville reform attempt did not

appreciate "the high degree of ignorance and apathy among the citizenry on questions of local government."³⁷ In Detroit, where charter reform met defeat in 1972, 61 per cent of the residents had never heard about the proposal, 16 per cent knew of the issue but could say nothing specific about it, and only 22 per cent had any detailed knowledge about charter reform.³⁸ This voter profile in Detroit substantiates other conclusions concerning citizen reaction to local government reform. In brief, support is most likely to come from those with greater knowledge of local government, and this knowledge must be accompanied by a feeling of personal stake in the issue--the conviction, for example, that change will improve "my public services" or "my tax situation."³⁹

Campaign Leaders and Helpers

Another requirement of a realistic political campaign is careful selection of the campaign leaders and workers. Communication with the community will be accomplished through them, and their identity, therefore, is very important. The participation and support of local officials in designing the reform proposal have already been discussed. Their involvement in the campaign phase is equally critical to the plan's success. Besides key public officials, influential citizens in the community also should be numbered among a reform campaign's leading figures. Possibly most important among these community leaders--for the purpose of carrying out an effective reform campaign--are persons in charge of the area's communications media.

Defeat of a recent Los Angeles charter reform proposal was linked to a failure of proponents to seek the support of city officials, business leaders,

civic groups, and the communications media at an early stage of the process,⁴⁰ Without this kind of identification and visibility at the head of the public information effort, citizens will remain uninformed or, even worse, misinformed--if groundless fears and suspicions are not dispelled. It also is a possibility that the political elite of a community can injure a reform campaign--not merely by passivity but by active opposition. Failure to enlist such support could result in repetition of the following (Detroit) situation:

. . . the impact of statements by public officials, and interest groups was a highly significant factor in the defeat, . . . the statements of elite groups were an unusually potent factor in molding attitudes, . . . the two major metropolitan dailies and the two T.V. stations . . . came out in opposition.⁴¹

While leadership of a local government reform campaign can advantageously be assigned to the politically sophisticated, the well-known and the powerful, precedent also argues that the actual task of carrying the campaign message to the electorate should be left to ordinary citizens. This observation is especially critical when considering the importance of communicating with the entire public spectrum. An esoteric or narrowly focused campaign will ruin any chance for reform. Thus, the successful Nashville reorganization effort made contact with the voters through ordinary people, especially women. The ranks of campaign workers were filled with interested volunteers and not given over to the area's "big names,"⁴²

Campaign Strategy

The campaign to be waged for the adoption of the reform proposal is as critical to the plan's fate as the designing stage.⁴³ The time and energy needed in the campaign phase of the review indicate that it cannot be a

tapering-off period. Study commissioners, local officials, and interested citizens must approach the campaign with the same determination, enthusiasm, and ingenuity that they mustered for the designing stage.

Implementing the Reform Proposal

Implementing the reform proposal is the last step in the overall review process. The experience of other states suggests that although a reform proposal has been adopted by the electorate, its ultimate utility still hinges on the way reform is made part of a community's pattern of life. Implementation of reform is not automatic. Opponents of the measure might still persist and try to nullify the decisions of the voters by thwarting or limiting implementation. Old battle wounds might be reopened in the transition phase and undermine the impact of the reform. Citizen ignorance and the general inclination to continue in established patterns of thought and behavior might undercut the effect of the change. Those involved in the implementation of a reform proposal should be prepared for these obstacles.⁴⁴

Pennsylvania has discovered that smooth changeover from an old to a new governmental arrangement can be facilitated by a broad-based transition committee. Membership on this committee should be made up of officials from the outgoing government, officials of the incoming government, and members of the local government study commission.⁴⁵ The idea here is that persons with a stake in the transition product and persons with detailed knowledge of the old and new systems should have primary roles in the changeover process. The Baton Rouge experience also supports the finding that successful reform is not necessarily guaranteed by achieving a majority at the polls,

Proponents discovered that they had to continue their efforts after approval to ensure the full realization of their victory. Continuing and well-meaning opponents were given an opportunity to suggest adjustments in the new system.⁴⁶

Conclusion: Public Involvement and Compromise

Local government reorganization, like politics in general, belongs to the realm of the possible. This is but another way of saying that the restructuring of local government is bound up in conflict and suffers the strengths and limitations of any political undertaking. Other states' experiences tell us that voter approval of reform is not linked solely to the merits of the proposal or the enthusiasm and zeal of the proponents. Because total community agreement on how to change things is hardly ever present, a willingness to bend and adjust should be the working attitude with which even dedicated advocates of change approach the study of local government alternatives. In all likelihood, negotiation and compromise cannot be excluded from any of the three critical phases of the review process--the designing of the reform proposal, its presentation to the electorate and its implementation--if a new form is to be adopted.

The Montana review of local government anticipates full community involvement in its various steps. The political implications of broad-based community participation are important. Other states' local government reform experiences suggest that Montanans would be well advised to take a pragmatic approach to local government reorganization. Citizens, local government officials, and study-commissioners may ultimately decide to settle for less than their desired program. There is a possibility, therefore, that the review of local government in some Montana communities

will not be accompanied initially by drastic and far-ranging changes--as was the case of the "home rule era" in Massachusetts,⁴⁷ Montana's first experience with governmental review could, however, be an educational experience for citizens and provide the basis for more extensive reform at a later time.

To reiterate, the one clear lesson that other states' experiences with local government reorganization teach is the necessity for compromise. But, the nature of Montana's review process should temper the applicability of this observation. Voter review in Montana, rather uniquely, is intended to involve citizens in the study of local government as much as it is intended to allow governmental change. The review process has, by design, sufficient built-in flexibility to allow citizens of each county and municipality to express themselves about their local government,

In the future, it will be as important to say that Montana citizens were involved in the review process as it will be to observe that change did occur. If Montanans do not get involved in a vigorous fashion, two unfortunate situations can develop. First, study commissions could be dominated by narrow interests or ideas if they meet no opposition or merely token protest. Secondly, real review might not occur if there is no citizen involvement. This situation could arise where the study commission is lackadaisical and receives no prodding from an interested public.

Much more can be learned from the local government reorganization movements of other states. Study commissioners and citizens certainly should be open to the utility of compromise, negotiation, and moderation. But, in the Montana review process, citizens must not hold back out of fear

of jeopardizing a reorganization effort. They must watch for their chance to influence the work of study commissions. They can attend commission meetings, testify at commission hearings, and add their voices to support or oppose the campaign for adoption. In this way Montana citizens will be able to say, "Its our product"--whether there is change or no change, minor or momentous, partial or complete.

FOOTNOTES

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³See Ann Smoyer et. al., The Great Falls Commission-Manager Referendum of 1972, ed. by Robert E. Eagle, Occasional Papers in Local Government No. 3. (Missoula: University of Montana, Bureau of Government Research, December, 1974).

⁴William C. Hayard and Floyd L. Carty, Rural-Urban Consolidation: The Merger of Governments in the Baton Rouge Area (Louisiana State University Press, 1964), p. 9.

⁵Ted Kolderie, "Governance in the Twin Cities Area of Minnesota," Regional Governance: Promise and Performance (Washington, D.C.: Advisory Commission on Intergovernmental Relations, 1973), p. 116.

⁶Adam W. Herbert, "The Los Angeles Charter: The Lessons of Defeat," National Civic Review, LX (December 1971), p. 636.

⁷York Willbern, "Unigov: Local Government Reorganization in Indianapolis," Regional Governance, p. 50.

⁸Temple, Merger Politics, p. 11.

⁹Ibid, p. 52.

¹⁰See Herbert, "Los Angeles Charter," pp. 604 and 607.

¹¹Henry J. Pratt and Mark K. Straley, "Detroit Charter Reform: Innovators and Traditionalists," National Civic Review, LXII (March 1973), p. 131.

¹²See Lawrence Herson, "The Lost World of Municipal Government," American Political Science Review, LI (June, 1957), 330-345; Charles R. Adrian, "Metropology: Folklore and Field Research," XXI (Summer, 1961), 148-157; and Norton E. Long, "Political Science and the City," Social Science and the City: A Survey of Urban Research, ed. by Leo F. Schoore, (New York: Frederick A. Praeger, 1967), 243-262.

¹³York Willbern, "Unigov," p. 62.

¹⁴Hayard, Rural-Urban Consolidation, p. 140.

¹⁵Daniel R. Grant, "Political Access under Metropolitan Government," Comparative Urban Research, ed. by Robert T. Daland (Beverly Hills: Sage Publications, Inc., 1969), p. 269.

¹⁶Havard, Rural-Urban Consolidation, pp. 104-5.

¹⁷Kolderie, Twin Cities, p. 130.

¹⁸Roland R. Renne, Costs of County Government in Montana (Bozeman: Montana State College, 1957), p. 34.

¹⁹See Smoyer, "Great Falls Referendum," and John C. Ingram, "An Analysis of Financial Problems for the City of Great Falls," Unpublished M.B.A. Professional Paper (Missoula: University of Montana, Department of Business, 1971).

²⁰Great Falls Tribune, March 10, 1974.

²¹A. L. Hydeman, Jr., "Remarks to the Montana Chamber of Commerce." Helena, January 30, 1974, p. 6.

²²Ibid., p. 5.

²³Daniel J. Elazar, A Case Study of Failure in Attempted Metropolitan Integration: Nashville and Davidson County, Tennessee (Chicago: National Opinion Research Center, University of Chicago, 1961), p. 80.

²⁴Havard, Rural-Urban Consolidation, p. 146.

²⁵Hydeman, "Remarks," p. 6.

²⁶Willbern, "Unigov," p. 59.

²⁷Herbert, "Los Angeles Charter," pp. 606-607.

²⁸Pratt, "Detroit Charter," p. 133.

²⁹Elazar, Case Study, p. 56.

³⁰Ibid., p. 54.

³¹Herbert, "Los Angeles Charter," p. 607.

³²Elazar, Case Study, p. 33.

³³Ibid., p. 22.

³⁴Temple, Merger Politics, p. 175.

³⁵Elazar, Case Study, p. 48.

³⁶Hawkins, Nashville Metro, p. 106

³⁷Elazar, Case Study, p. 91,

³⁸Pratt, "Detroit Charter," p. 133,

³⁹Hawkins, Nashville Metro, pp. 110-127.

⁴⁰Herbert, "Los Angeles Charter," p. 607.

⁴¹Pratt, "Detroit Charter," p. 133,

⁴²Hawkins, Nashville Metro, p. 93,

⁴³The proposal to consolidate the city and county in the Portland, Oregon area failed in November, 1974, by a two-to-one margin. Preliminary assessments of this failure lay substantial blame on the type of campaign for adoption that was conducted,

⁴⁴See James J. Lopach and Robert E. Eagle, Changing Governments in Great Falls: Transition Amid Dissent, ed. by R. June Thornton, Occasional Papers in Local Government No. 5 (Missoula: University of Montana, Bureau of Government Research, 1975),

⁴⁵See Pennsylvania, Home Rule and Optional Plans (Harrisburg: Department of Community Affairs, 1973), pp. 48-49,

⁴⁶Havard, Rural-Urban Consolidation, pp. 146-147

⁴⁷David A. Booth, "Massachusetts Home Rule: A Look at the Record," National Civic Review, LXI (February, 1972), p. 70.

CHAPTER V

ASSESSING COMMUNITY NEEDS AND LOCAL GOVERNMENT FORMS

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COMMUNITY CHARACTERISTICS: FACTORS FOR
EXAMINING THE STATUS QUO TO DETERMINE GOALS
IN THE REVIEW PROCESS

The discussion in Chapter II emphasized that Montana's local communities, both counties and incorporated municipalities, are surprisingly diverse. This diversity can and does affect the operation of local government. Each community is likely to have developed a unique balance of goals and needs which need to be evaluated during the voter review process.

The first part of this chapter suggests ways of looking at the characteristics of a particular community in order to help study commissioners ask productive questions regarding the broad options--choice of local government form, choice of powers, and choice of scope of jurisdiction--to be considered during the review process.

Local study commissioners may not find all of the characteristics discussed below useful in analyzing their own community. The list is intended to be a comprehensive aid; as each variable is considered, its relevance for the review is discussed. This discussion anticipates questions concerning review options pertaining to a particular community characteristic.

A comprehensive analysis of community strengths and weaknesses is important in evaluating the capacity of the present or any future local government to respond to needs. Problems in the community may not be caused by deficiencies in structure but by lack of powers or restricted geographic jurisdiction. It may be concluded that the problems are a result of financial inadequacies or other factors beyond the control of local government.

Identification of community characteristics is important in determining whether they specifically require the present form of government or have

resulted from it, and whether a different form of government can help create new community goals. Community variables are important in deciding what kind of government is best for a community and what kind is possible.

Compared with most other states, Montana's local communities are relatively homogeneous and, for the most part, fairly stable. Nevertheless, there is considerable variety in Montana's cities, towns, and counties. One purpose of the local government review is to enable diverse communities to tailor structures to fit local needs. Factors which account for this diversity include demographic, physical, social, economic, and political characteristics.

Demographic and physical features

The size of the community (area and population), its population density, distribution and rate of change, and its networks of transportation, communication and economic activity all influence the capacity of local government to function.¹ These factors affect all aspects of service delivery and the kinds of representation found in the decision-making structure. Conversely, different governmental arrangements can change the demographic and physical pattern in the community.

Population size.

While demands upon government increase as the local community grows, the per unit costs of service delivery usually decrease (until metropolitan status is reached). The importance of size lies in the ability of the unit to take advantage of economies of scale. The cost of services provided by a county commission, for example, can be spread more easily over 50,000 residents than 5,000, with little loss in effective government. In fact,

one source estimates that a population level of 50,000 is minimal for efficient provision of local services.² The local study commissions will discover that, with few exceptions, the potential to deliver services at low cost is limited.

The limitations of size can be overcome by determining which local government functions can be effectively handled by smaller communities, which can be dealt with through some form of interlocal cooperation, and which will require state or federal assistance or total performance. The operations within a single function may be handled in the same way. One study identifies individual functions that can be performed by communities of different size, including categories of population of 10,000, 25,000 or more, and metropolitan.³ Some functions can be shared by government at the local level (city-county) while maintaining the separate identity of the two units.

Size will often affect the complexity of problems which local governments must face. Larger communities may have greater need for administrative centralization, executive leadership and legislative flexibility in order to meet the problems created by size. Therefore, in Montana's few cities and counties with urban populations, the challenge will be to combine cost savings with leadership and management capability.⁴

Relevance for review. Size will be a consideration in determining: (1) what form of government is most efficient and least costly for the community, and (2) whether professional administration, executive leadership and legislative flexibility are particularly important. Study commissioners will have to consider in what ways alternative governmental forms might affect the future size of the community, for example, through planning or

zoning. Finally, they must judge whether community size has produced problems of such complexity that the flexibility of self-government powers is the best alternative.

Population density, distribution and rate of change,

The ability of a community to provide services and representation is affected by local patterns of population and changes in those patterns. Certain services can be provided to small populations if each unit is compact (density) or if the service is required in some areas and not others (distribution). Services that are related to transport costs (garbage disposal) and distance factors (street construction and street maintenance, sewerage lines) will be directly affected by density patterns. However, it is important to note a third controlling relationship. High density, is likely to increase certain kinds of problems which call for increased public expenditures. High density areas may become slums or they simply may require greater fire or police protection for example.⁵

While density refers to the average population per unit of area for the locality, distribution refers to patterns of population dispersal. All of the population, or a majority of it, may be concentrated in limited areas. If the city is well laid out in terms of residential, commercial and industrial areas, the costs of particular services may be reduced. Likewise, if rural and urban portions of the county are clearly delineated then efficient service districts can be created.

In addition to efficiency, distribution refers to equitable charges for services provided. If a portion of the urban community lives outside the city boundary and utilizes city services without paying for them, the system lacks fairness. This inequity also may disguise the fact that urban

services might be efficiently supplied if everyone using them were charged and charged in proportion to their use.

Review commissioners must present a form of government that will be effective in future years. Therefore, they should examine the patterns of population change which have produced the present situation, in order to anticipate future trends. Local government capabilities which are not important now may become a concern in the near future if increasing or decreasing population affects existing densities and distributions. The proportion of a county's urban to rural population may change. Population losses may require simplification of local government or termination of a particular service. In communities where population change has been dramatic and promises to be unstable in the future, study commissions may require technical assistance to assess the situation.

Relevance for review. Population density and distribution will be important in evaluating present government service performance. The record of the local government may appear poor in comparison with other communities until it is realized that local population patterns limit efficiency. But a change in form may have little effect on existing population patterns. Present distribution will be important in considering the need for change in local government jurisdictional boundaries; the prospect of future population change will raise the same considerations. The possibility of rapid growth will also affect the decision to assume self-government powers if it is believed that the problems introduced by growth will necessitate immediate response capability at the local level.

Physical features.

Certain physical dimensions affect demands on local government. Cities

and towns were often situated initially to take advantage of waterways or some natural feature. Access to water can result in disadvantages in terms of governmental expense. Bridges, drainage ditches, sewage disposal, water pollution control or flood control may add costs not encountered in communities of similar size with other water resources. Review commissioners must consider the specific circumstances in each locality (heavy snowfalls, temperature inversions, flood plains) when considering the cost or effectiveness of governmental forms.⁶

Topographical factors are important in considering change in local jurisdictions. The availability of land adjacent to the urban area for residential, commercial or industrial expansion will be affected by factors such as agricultural value, susceptibility to floods, etc. Being able to plan, zone or otherwise facilitate growth in an orderly fashion is especially important in such circumstances. The capability of overlapping governmental jurisdictions to cope with such problems in this kind of setting might be questioned.

Topographical features often combine with population distribution and the presence or absence of planning and produce related problems. Patterns of zoning, planning, and transportation should be examined to determine whether they result in increased burdens on local government. Study commissioners must then decide whether a new form could really make a difference in providing stronger planning authority in the future.

Evaluation of the zoning pattern will help to determine whether the most efficient service delivery systems have been achieved. Analysis of the transportation grid should help answer four questions: (1) Are service delivery costs related to distance factors? (2) Is transportation

provided at the lowest per unit cost for the community in general? (3) Do taxpayers in the community pay their proportionate share of the service costs? (4) Is better future transportation planning crucial to overall community planning and development? It is likely that study commissions will have to contract for this kind of study, so they will have to decide whether it is of such importance to the review that the cost is warranted.

Relevance for review. The community's physical layout is important in considering whether the present form of government is doing the best job possible under the circumstances. It will be especially important when discussing the problems for which the local government ought to be held responsible and in assessing whether a change in government can make any difference. Stronger planning capabilities might be desired. Consideration may be given to the creation of a unified government whose boundaries correspond to topographical problems mentioned in this section.

Social distribution

The nature of a community's population may affect local government as much as its size or physical distribution. Ethnic, racial or religious variables influence the way most large city governments in America function. In Montana, the geographic distribution of population in these categories is less important than the social distribution within each population, the urban-suburban-rural division, and the age profile.

Income disparity.

Each local population is composed of different social groupings as measured by income, education or occupation. The proportion of the population in different income groups, the disparity in income distribution and the resulting residential patterns are important indicators of types and levels

of demands on local government. If these social and residential patterns are also associated with ethnic differences, the problems of local government are magnified.

Inequitable income distribution may produce community conflict over the need for local services. Higher income groups, capable of assuming responsibility on an individual basis, may press for low levels of health and welfare services. They may favor spending the money for improved streets and lighting in suburban areas. When the suburban areas lie outside the city limits the possibility of conflict over community spending is magnified because the suburbanites tend to support their place of residence over their place of work. Less money may be necessary to construct suburban boulevards than downtown parks but such expenditures would clearly favor one social group over another.

Governments must respond to popular demands that take little account of overall spending levels. Local study commissions must recognize, therefore, that different parts of the community will have different ideas of how monies can best be spent. Where there is unequal distribution of income, study commissioners must also recognize that different versions of efficient service provision will be expressed. The effects of class division in a community may be apparent in several ways--upper class groups tend to favor the non-partisan, managerial, administrative model of local government and view local government services in terms of efficiency and economy; lower income groups usually favor retention of the local government political arena, ward politics and the distribution of local services on a modified partisan basis. In other words, lower income groups tend to view local government as a means of redistributing resources while upper income groups want the

emphasis placed on the proprietary aspects of government.⁷ These conclusions are not restricted to big city politics.

Social divisions reinforced by residence patterns are factors in considering the need for, and possibility of, local government mergers. Suburban residents may want to protect their own style of life outside the city boundaries and may oppose paying taxes to support the milieu which they have left. They can be a powerful force opposing consolidation.

Relevance for review. The social distribution in the local unit will directly affect the choice of form, especially whether local government will be partisan or non-partisan, and any decision to consider merger of local units or transfer of services. It will also affect the decision to assume self-government powers if it is believed that social conflict in the community will be increased by expanding the area of discretion at the local level.

Urban-rural division.

Although Montana's more populated communities are, in many respects, more like suburban than urban areas, suburban politics are still relatively unknown. Rural-urban dichotomy is important to the operation of county and, sometimes, city and town governments. A county which has both strong urban and strong rural interests will place special demands on local government and may require a carefully designed pattern of representation in the decision-making unit. Consolidation of local government functions or units will depend on the proportion of urban residents in a county and the proportion of the urban area lying outside of the city or town boundaries.⁸ An essentially rural county which contains several small towns may also require a unique system of representation, such as a federation or community councils.⁹ In highly rural counties with only one or two small

incorporated towns the answer may be disincorporation, accompanied by a strengthening of county government.¹⁰ Urban-rural divisions may become important if their proportions are changing. Large numbers of newcomers may bring strong support for change, modernization or reform of local government. Factions may develop in the community around the themes of status quo and change, and the merits of individual governmental alternatives may be lost in the discussion. Rural areas losing population may become increasingly committed to the status quo in government, hoping that it may help to head off or slow down change.

Commissions in high growth areas should be aware of the changing proportions of rural-to-urban and newcomer-to-oldtime residents in order to anticipate the reception of possible recommendations. Commissioners should assess whether a population influx has produced value conflicts in the community, or whether newcomers have been gradually acclimated to prevailing community norms. This question is especially important in the areas affected by coal development since many of the newcomers arrive from outside the state and their values may conflict with those of long-time Montanans.

Relevance for review. The most important specific consideration in examining rural-urban division is the question of consolidated governmental forms. In communities which have both strong urban and strong rural interests, the study commissions should consider the need for cooperation at the local level and the possible acceptance of a departure from familiar local government forms. These same considerations will affect the adoption of self-government powers if either interest feels that greater power in the hands of local government may affect adversely the present balance

between them.

Age distribution.

The community age profile tells a great deal about its need for and capacity to provide certain services. A population with a high proportion of older persons may indicate a large service burden, an unresponsive property tax base and/or potential resistance to certain kinds of change. A predominantly young population also may necessitate large service burdens, plus a property tax drain for schools and/or a need to plan for future service delivery of different kinds as the population ages. A balanced age distribution may reflect the ability of the community to provide for service deliveries at adequate levels. The study commission should examine past patterns of age distribution and estimate future trends. A "young" community may grow up to find itself burdened with a surplus of schools and parks. A "normal" community may discover that young people leave the community and that it becomes progressively older. A community may also discover that the maturation process of young people has helped create a new value pattern in the community, perhaps of greater optimism and commitment to community ideals.¹¹

Relevance for review. The age distribution may not dictate choice of a particular governmental form. It will provide an estimate of certain community needs and capabilities and help the commission to judge whether present governmental performance is satisfactory under the circumstances. It may sensitize the study commission into recognition that the community is not what it used to be, and that some change in government forms may be useful in stimulating the community's awareness of its changed composition.

Economic factors

Economic characteristics refer both to community demands on local government and to resources which the community is capable of applying to needs. Some programs in poorer communities may be beyond its resources regardless of governmental form. Richer communities may be able to afford some governmental inefficiencies because of ample resources. Study commissioners must be careful not to judge the form of government, if it is the nature of the community which is the problem.

Demands.

Demands are pressures for services which emanate from those demographic, physical, social and other characteristics of the local populace already discussed. How well can individuals provide for their own wants and needs? What proportion of total economic activity must be stimulated by spending in the public sector? What is the welfare load, the pattern of unemployment, the housing market? Is the community in a state of growth, stasis, or decay?

The nature of the economy in the community can also be an important determinant of the pattern of cleavage and conflict in the community which may hamper effective local government. Towns heavily dependent on a single industry may develop antagonisms between labor and business. In agricultural communities there may be tensions between farmer and merchant groups. Towns with a more balanced economy may be able to avoid these kinds of disputes and reduce the demands upon the local government.¹²

Within certain limits, the kind of government in the local community can have a reciprocal effect upon demands. Strong local government executive leadership, for example, may help promote commercial development if

that is what the community wants. Different local interest groups such as the chamber of commerce or union hall may have different ideas about what kind of government can create the best economic climate. For the most part, however, the economic situation is an independent variable as a demand on local government and will not be greatly affected by change in form.

Resources.

The ability to provide local government services is directly related to the size of the local property tax base. Property taxes account for more than 50 per cent of the budgets of county government in Montana and 45-50 per cent of those for cities and towns.¹³ The availability of the property tax base for local government finance is being constantly diminished by school budget demands. Schools currently consume 60 per cent of the total property tax collected. There is stiff competition for the remainder, with 25 per cent going to counties and 12 per cent to cities and towns.¹⁴

Still, some local governments are better off than others. Study commissions should examine trends in tax valuation levels over the recent time period in order to determine whether the local unit currently is able to support services. Comparisons should be made with other local government units in similar circumstances in order to assess the capabilities of the present government. Some of the important questions to be asked include:

- (1) What is the proportion of the area's land which is taxed at commercial, agricultural, residential or industrial rates?
- (2) What has been the shift in proportion of land in these categories?
- (3) What has been the shift of property tax valuations out of the city or town into the county (or out of the county)?
- (4) Does the local unit depend heavily on a particular

kind of industry or commerce, or upon a small number of important companies? (5) What proportion of the land is owned or controlled by other governmental jurisdictions and not subject to taxation? (6) What are the trends in economic activity which project an expanding or declining tax base? These and related questions will be important in determining whether or not economy in government is a critical consideration in the review process.

The remainder of local government finance falls into three categories: (1) licences, fees and miscellaneous funds which are received by various local government offices and agencies; (2) cost-sharing programs with state and federal aid; and (3) general revenue sharing. The proportion of funds raised in the first category is similar for most Montana local governments. It remains a relatively inflexible source and cannot compensate for a reduction in revenues created by a declining property tax base.

Cost-sharing programs may distribute funds among local governments in a disproportionate manner. Welfare service funds, for example, may go to units with the greatest demonstrable need. Thus, resources are tied directly to economic conditions and cost-sharing programs do not provide "free" funding for local units to use at their own discretion. Instead, such programs require the establishment of priorities at the local level and provision of matching funds that local units might prefer to use elsewhere.

Revenue-sharing promotes greater local flexibility in determining priorities. Much revenue-sharing money has been used for capital outlay projects, once-in-a-lifetime endeavors which might never have been achieved through bonding. The average local jurisdiction, through fiscal year 1973, had used more than half of shared revenues for new purposes.¹⁵ It must be remembered, however, that this source of funding is not yet guaranteed

beyond 1976. Some local units are careful not to make continuing programs depend on revenue-sharing money. On the other hand, these monies may eventually have to be used in cost-sharing programs as the federal government withdraws from them. In 1974, revenue-sharing funds accounted for about six per cent of local government budgets--a reduction of eleven per cent from the year before. The stability of that figure is subject to many variables.¹⁶

The importance of considering the impact of revenue-sharing and cost-sharing programs lies in their future uncertainty. A local government that appears to be operating successfully under present conditions may be too inefficient to function if and when subsidies are withdrawn.

Relevance for review. Consideration of economic demands and resources in the community is most important in judging the performance of the present government. The economic picture will help determine whether efficiency and economy in government are important in selecting a form and in considering the need for consolidating local jurisdictions or functions. If the adoption of self-government powers carries with it the potential for greater fiscal flexibility at the local level, then the choice will be affected by the present economic picture.

Political patterns

The nature of the community is also reflected in certain political characteristics which are a product of demographic, social and economic variables. Political conflict may result from any of the community separations described in earlier sections: rural-urban division, class difference, newcomer vs. long-term residents, and business vs. labor. Study commissioners will need to develop a sense of which of the groups are important politically, and, based on this determination, will have to evaluate the political

feasibility of change in the community (change of any kind, as well as specific kinds of change). Sometimes political variables take on a life of their own. For example, a particular community may have tried an alternative form of government at one time and rejected it because it did not fit the prevailing circumstances. The circumstances might since have changed, but opposition sentiment may remain. This could occur in places such as the city of Missoula or Silver Bow County. The political climate, therefore, may have changed little.

The study commission can influence the political climate through public education and the news media will be an important part of the process. The newspaper is likely to be very influential as the voice of the entire community. Its enthusiasm for the local government study process and for the alternative form suggested may be critical to success. The study commissioners should make every effort to keep their activities in the news and to publicize the open, participatory nature of the review. If the public has not been made aware of its significance, it will not lead to a rational choice between the old and new governmental form in 1976.

The articulation of interests.

Study commissioners whose recommendations are too far in advance of the political climate may be losing a chance to bring about some change in local government through the review process. This point stresses the importance of pinpointing the process by which the interests of all factions in the community are voiced. Preferences may be expressed at the polls in 1976 which study commissioners will never hear in their open meetings, if the wishes of large sections of the community are not articulated. The study commissioners must ask: (1) Are all segments of the community being

heard in the review process? (2) Do the organized, vocal groups, added together, speak for the entire community? (3) Do the prevailing interests dominate channels of access and communication? (4) Does lack of community interest imply satisfaction with the status quo? Public opinion surveys may be very important if it is felt that a large proportion of the population does not make itself heard in local decisions.

While community spirit may be fostered by the review, it must be remembered that different interests will have different ideas about the best solutions. Conflict is likely. Labor, business, suburban residents, civic groups and others may have preferences regarding the kind of local government, the powers it possesses, and its scope of jurisdiction. For example, whether or not local self-government powers will include taxing discretion is important to both labor and business which have different perspectives on such taxes as the sales tax.

Local elites.

Support for, or opposition to, a particular form of government often depends less on the merits of the form itself than on estimates of who is likely to profit from change.¹⁷ Incumbent officials obviously will have some vested interest in retention of the present system, but so may other, less visible community groups. These elites could dominate community politics under the present structure of government and oppose change.

Many studies have focused on this question of "who rules" in American communities and the methodologies used vary widely.¹⁸ Study commissioners cannot hope to conduct an exhaustive community power study to determine which local elites are dominant but they will probably have an intuitive sense of the way things happen in the community. They should remember,

however, that power operates both formally and informally. Sometimes the formal power can be traced to political parties, interest groups, the media, or others whose actions are highly visible. But sometimes elites operate quietly, behind the scenes, and exert unseen influence.

The pattern of influence in a local community may be related to the effectiveness of service provision, although this does not always hold true because other factors are at work. In a pluralistic situation where no particular set of elites predominates, the competition for elective office will force candidates to promise services to several groups. The general level of services will rise as a result of this attempt to win votes.¹⁹ Citizen demands for greater service delivery may fall on deaf ears in an uninformed community dominated by an informal elitist power structure.

Territorial distribution of power.

Study commissioners faced with the prospect of altering local government jurisdictions will be concerned with the territorial distribution of political factors. What is the numerical strength of the groupings living within and outside the city limits? What financial advantages could the groups bring to bear in a publicity campaign? Where do the community leaders and influential citizens reside? The most ingeniously designed plan of city-county consolidation will fail if it ignores the politics of its implementation.²⁰

Relevance for review. The community variables discussed will not be important unless they are also relevant politically. The study commissioners must attempt to assess the overall political climate because the success of their entire review may depend on the strength of support for different views. A choice may appear completely logical in terms of the welfare

of the community as a whole, but it may be totally unacceptable to a particular group which has political influence, or simply be too complicated for the average voting citizen to understand. This consideration also applies to forms, self-government powers, and consolidation of units, offices or functions.

Study commissioners should try to build on the political strengths of the community. Enlightened local officials may be positively oriented to changes which will help local government run more smoothly. Influential groups and citizens may be brought over to the side of change if its merits can be demonstrated. Interest groups are the key to reaching their membership in the community. The news media constitutes a critical ally.

LOCAL GOVERNMENT FORMS: OBJECTIVES OF ALTERNATIVE STRUCTURES

Study commissioners will be better able to determine what they want from a form of local government once they have a picture of their community's needs. In the past, various local government forms have been devised to meet the problems and achieve the goals of specific kinds of communities. Some forms, for instance, may have originated as a means of unseating incumbent local officials. Usually, however, the local government in a community has been accepted as part of a way of life for so long that the reason for its design has been forgotten. Each governmental form reflects certain strengths and weaknesses in meeting community needs--and the combination may make that form particularly suited to achieve some objectives but less appropriate for the pursuit of other goals.

The second part of this chapter discusses eight specific objectives

that different local government forms may be designed to achieve. Reference is made to the kind of structural arrangement which best fits each of the objectives. Based on their assessment of community characteristics, study commissioners will be able to determine which of these objectives are most important for their community. With these objectives in mind, they can then consider the alternative forms discussed in Chapters VI and VII.

Taken together, the eight objectives constitute a basis for evaluation that can be applied to any known local government form. This evaluation base allows comparisons to be made and all forms to be ranked in terms of their overall strengths, that is, how well they achieve the eight objectives. These eight objectives are: economy, efficiency, representation, responsiveness, accountability, checks and balances, leadership, and planning. Other objectives may be important in a particular community, but those identified here have been found important most often in case studies of local government throughout the nation.

Economy

The issue of economy in government raises two complementary questions: (1) Is the present form of government operating in the most economical fashion? (2) Are other forms of government inherently more economical? Given the size of the community and its particular characteristics, study commissioners may decide to recommend the form of government which costs the least. In order to minimize expense, citizens and study commissioners both may decide that the best government is the least government.

Usually, the most economical form of government is the one with the fewest parts, the simplest, the most streamlined. Economy of governmen-

tal operation can be achieved by streamlining or simplifying the present "general control" ²¹ structure by consolidation of certain offices--either within the local unit or across local units--or by reducing or curtailing the delivery of certain local services. Reducing the cost of general control may allow for the continued provision of services at the same level despite rising service costs. One study determined that the greatest savings resulting from consolidation of local government units would occur in this category.²²

The consideration of economy in government may be more important to smaller communities than to larger ones. The per capita cost of local government decreases as the size of the unit increases. This is especially true for general control, since smaller units may have the same number of officials as larger ones.²³ On the other hand, in larger communities where sizeable commitments of resources are involved, a simple decision to alter a structural arrangement may result in more significant savings. The quest for economy is a legitimate concern in large and small communities alike.

It should be noted, however, that the cost of general control is only about ten per cent of the total cost of county government.²⁴ Changes in governmental form which effect a ten per cent saving in general control will produce, therefore, a saving of only one per cent of total costs. The study commissions should balance this against other possible disadvantages of abandoning or retaining the present form.

Overall tax reduction should not be expected from consolidation of governmental jurisdictions. Total cost reductions have not followed acts of consolidation in other states. Merger of county units, or the merger

of cities and towns with counties, has reduced duplication, but the unit savings have been applied to expanded service deliveries in other areas.²⁵ Because of the increasing cost of government, total spending by consolidated units has not been less than the sum of spending by the individual units in previous years.

Efficiency

One study notes that "both economy and efficiency still are the twin beacons which guide the good administrator."²⁶ Although it is often difficult to separate these two criteria, we use efficiency here to refer to the least costly method of providing a given level of services rather than to the savings realized if the service were provided at a different level of government or not provided at all. If each level of government is assigned those functions which it is best suited to perform, greater efficiency is likely to result.

Study commissions must determine what kinds of services and what level of services are desired in their community before they can evaluate the most efficient method of delivering those services. This process may not be easy. Economies of scale may come into play. If a particular service is offered over a larger territorial or population base, the per capita cost may go down or better service may be provided at the same or higher costs. Thus, taxes may be increased slightly but the service delivery returns may be substantial. So, the rate of saving at different levels of delivery may influence the level desired. This is an important question in all cases where multiple jurisdictions create duplication of services.

In comparing optional forms for efficiency, study commissioners are

likely to find advantages in those which have simplified administrative structures, those which emphasize professional management, and those which simply reduce the size of officialdom. Combined governmental jurisdictions which introduce one or more of these features can be expected to produce an edge in efficiency as well. Study commissioners should examine all avenues to efficiency within the present form before suggesting that a different form is the answer. A useful checklist for evaluating local government performance, one that asks 764 specific questions regarding all aspects of local structures, can be obtained from the International City Manager's Association.²⁷

Representation

Local government is the level closest to the people. Although it has never been held in high esteem, local government has been criticized less than certain other levels of government during the present crisis of confidence in government. Its representative character results from the presence of fellow citizens in official roles. To the degree that local government is representative--the extent to which its composition reflects that of the community²⁸--the more likely it is to maintain its legitimacy. Direct representation in local government decision-making is likely to promote feelings of political efficacy and community attachment among residents,²⁹ although administrative efficiency may be hampered. The more diverse, the more heterogeneous the community, the greater the demands placed upon mechanisms of representation.

One measure of a local government's capacity for representation is the ability of ordinary citizens to fill official roles. This principle flows from the Jacksonian philosophy of government which maintains that

every man can and should be governor as well as governed.³⁰ This possibility is diminished if decision-making roles require trained professionals and specialists. Thus, there may be a tradeoff between efficiency and representation in a local government form; the study commissioners will have to compare Jacksonian democracy with theories of modern public administration. If the principle of representation is maximized for policy-making roles and that of efficiency is maximized for administrative roles, both objectives may be achieved.

A corollary concerning representation involves the number of roles, or offices, to be filled by election. The difference between the elected county officials form and the county manager form presently on the books illustrates the point. The long-ballot slate of elected county officials theoretically maximizes the principle of representation. In city councils, larger policy-making bodies are likely to be more representative than smaller ones, provided elections are from ward rather than at-large and districts are not grossly gerrymandered. Consequently, any design for a consolidated government must consider carefully the pattern of representation for the new jurisdiction.

A trade off between representation and decision-making also may be necessary. An attempt to represent the full range of diversity in the community may result in an unwieldy legislative body incapable of reaching decisions. In this case, the principles of Jacksonian and Jeffersonian democracy clash with the precepts of Alexander Hamilton underpinning positive decision-making. On the other hand, too small a legislative body in a very diverse community may under-represent certain interests. So the pattern of representation is an important consideration, both in

choosing between optional forms and designing structures within the preferred form.

The question of non-partisan elections should be raised at this point. Their effect on patterns of representation is not clear, but they may dilute the sense of representation if people have depended on party identifications in the past. A decision to abandon partisan elections may depend on the policy of the party controlling community politics.³¹

Responsiveness

Complementing the principle of representation is that of responsiveness. Responsiveness involves the degree to which decision-makers are willing and/or able to act on the people's behalf. One of the most common claims made in favor of giving local governments more power is that local officials are close to community problems and have the best grasp of local conditions. Therefore, study commissioners may want to determine how responsive leaders are to conditions in their community and how well the form of local government fits the objectives that really matter to local residents.

Local government is more likely to be responsive to the electorate if it is representative, but any form can be responsive if the officials are sensitive to community needs.³² On the other hand, representative institutions do not guarantee responsiveness. Representation refers to characteristics of the decision-makers; responsiveness to the decisions which they make. Even a dictatorship may be responsive, if it maintains power by satisfying certain popular demands. Professional administrators may not be representative of the constituency they serve, but they may have a keen sense of constituency demands. That is why managerial forms of gov-

ernment are effective in some communities, even though citizens do not recognize friends and neighbors in decision-making roles.

Responsiveness may be a function of communication. Demands cannot be met if they are not heard. Therefore, accessibility is a component of responsiveness. If people believe that they have had the opportunity to be heard, both in the formulation of policy and in redress of grievances, the form of government itself may not be so important. The town meeting, of course, maximizes the principle of responsiveness between decision-makers and citizens because the two are the same and are not separated by representative structures. In the same way that responsive government is usually associated, correctly or incorrectly, with representative government, citizens often feel that managerial, professional, bureaucratic forms of local government are not accessible. It may be a major task for study commissioners to convince citizens that these stereotypes do not necessarily hold true, especially in local units of the size of those in Montana.

It seems almost axiomatic that a reformed local government structure (manager government or at-large and non-partisan elections for any form) will automatically be more responsive to constituent demands. This assumes that the public interest will be better served if the political aspects of local government are removed and social cleavages are not allowed to dictate public policy. The outcome in such situations is that government may become less responsive to all groups in the community. One study concluded that most American cities with mayor council governments and unreformed structures (such as partisan elections and ward constituencies) give greater access to decision-makers by identifiable community groups than do reformed city governments.³³

Accountability

Accountability is the link between representation and responsiveness. It refers to the system through which officials are held responsible for their actions. Local government officials may be responsive and/or representative whether they are elected or appointed. However, elections turn responsiveness into accountability and remind officials that they are the people's representatives. Elections are the ultimate popular sanction. Forms of government can be compared in terms of the effectiveness of elections in controlling official decisions.

Superficially, it would appear that the greater the number of elected officials, the closer the net of accountability. This is the rationale of the long-ballot system. It would hold true if each official were responsible for separate and clearly visible policies and functions. However, this is not true, especially in county government. Administrative duties overlap and important policy is usually set at the state level. Opportunities exist for "passing the buck," because the ordinary citizen does not understand what county officials are supposed to do. Conversely, county officials are often held accountable by the people for decisions not of their making or for failure to perform functions beyond their authority.

Accountability can be fostered in a managerial or administrative system which depends upon an appointive chain of command with elective responsibility at the top. The people's job is simplified since they have only legislative authority (or a single executive) to hold accountable. The elected officials keep close watch on their appointees because they are responsible for the actions of subordinates. Accountability is maximized because incompetent officials have no fixed term of office and can be

removed at any time. This allows for continuous rather than periodic oversight by citizens. Lateral buck-passing is eliminated because of a clear vertical chain of command. Accountability, therefore, can be created in an appointive system. In contrast, the long-ballot system makes it difficult for citizens to identify who they are to hold responsible for what.

Accountability is also a consideration in overlapping governmental jurisdictions. Where two or more governments are responsible for different aspects of a service delivery in a single territory, lines of responsibility may be obscure. The wrong officials may be ousted at election time. A single territorial unit is more likely to promote accountability--depending, of course, on the form which is adopted for the combined unit.

Accountability is also related to the question of self-government. Citizens are usually unaware of the limitations placed on local government by the state. Officials may be held responsible when they have no authority to respond to citizen demands. On the other hand, officials may rely on public ignorance to escape real obligations, using the excuse that local governments are the creatures of the state. Adoption of self-government powers would help clarify these relationships. Both citizens and officials would have a clearer understanding of what local governments can and must do, and the ground rules of accountability would be mutually understood.

Checks and balances

Constitutional government in the United States, at all levels, implies limited government. In addition to specific restraints enumerated in constitutions, government is also limited by popular control, and the sharing of power within and among governments. Federalism is one example of this dividing and sharing of power. Separation of powers at each level of the

federal system is another. Local governments in Montana are no exception to the principle of separation of authority.

In theory, the mayor-council form of government used in most Montana cities and towns separates executive and legislative power. Depending on whether a strong mayor or a weak mayor variation is selected, this separation is not always complete in practice. The commission-manager form (of which Montana has three examples) does not completely divorce executive authority from legislative supervision, but does centralize administrative authority and separates it from policy-making.

In the counties, the elected official form separates the administrative functions by allocating them to numerous elected officials. It fuses legislative and executive power in the board of county commissioners. The elected executive option would both consolidate administrative authority and separate executive and legislative authority. The county manager consolidates administrative authority, but retains some executive accountability to legislative authority.

The study commissioners themselves will have to determine the importance of the separation of powers for controlling authority in a particular community. If popular control through elections is considered a sufficient check on power, then fusion of powers may not be a threat to individual liberties. An important question remains: are administrative efficiency, decisive leadership, general government responsiveness and change thwarted in a system in which executive authority is spread across numerous elected officials? In answering this question and others concerning distribution of power, the study commissions face the same dilemmas that have taxed the imagination of political theorists for centuries.

Leadership

Leadership roles in local government do not compare with those of the American presidency or state government. With the exception of the largest cities, leadership demands in local government are probably not as great. This is true to the extent that local government is non-political or purely administrative, although in more diverse communities, the potential for political conflict increases. Running a city effectively may call for leadership that can tie the community together and create a sense of community purpose. When residents feel a strong identity with one another and with community-wide goals, volunteer leadership is more likely to be offered. Unpaid voluntary work is a unique and important dimension of local governance.³⁴ Forms which emphasize single, rather than collective, executive leadership and those that maximize citizen involvement in local decision-making are probably most likely to achieve these goals.³⁵

Strong leadership may involve a tradeoff. A strong political figure, one with vote-getting ability, may lack the managerial skills necessary for administering local government. The appointment of a professional chief administrative officer who is responsible to the executive but in charge of running the city on a day-to-day basis may compensate for this disadvantage. Some Montana cities and counties are reaching the stage where questions of providing efficient administration and decisive leadership are equally important.

Planning

This is a feature of local government made important by changing urban environments and a direct result of the transition of cities from integrated communities to mere market places. It has become necessary to

reassess where these changing conditions are leading us. Planning is needed if we are to control rather than be controlled by them.

The question of planning is important for the review process in three ways. Most obvious is the question of multiple local government jurisdictions. Rational planning simply cannot be carried out in such conditions. Multiple local governments are themselves symptoms of inadequate planning. Some planning can occur in Montana counties today, but the degree of control given this level of government may depend upon overcoming the problems of joint local jurisdictions.

The second concern, therefore, is whether self-government powers will include flexible planning authority. This will not be known immediately. The best assumption is that greater planning authority will be given to the jurisdictions which can actually put it into effect. Here is a case where questions of structural effectiveness and powers may be tied together.

Finally, the ability to plan depends on how the authority over planning is distributed within a governmental structure. Long range planning is impossible if many officials are given authority over short run decisions. Today's decisions on where to build roads, schools, and bridges will determine the major community problems of tomorrow. Because planning operations at the local level are still relatively underdeveloped and little understood, it is not yet clear whether differences in planning capacity can be traced to forms of government.

Some observations on methodology

None of the objectives discussed has a natural or inherent priority over the others. One group of people may think that one particular objective is the most important consideration, while a second group may cite

other needs and goals. Some may prefer that a form be designed which will balance achievement of objectives. If this is not possible, then study commissioners will have to decide which objective to sacrifice. No attempt has been made to influence the selection of objectives; the list merely delineates the maximum range for choice.

Two points regarding methodology for use of the criteria are offered here. The final process of evaluating how well a particular form of local government meets the eight objectives will take place under the practical conditions of a real world. Therefore, the present form of government in the local community cannot be judged in isolation. For example, the discussion in this chapter implies that some forms of government are more efficient than others. But before a determination can be made that an alternative form would operate more efficiently than the present form in the same community, the following questions must be answered:

- (1) Could greater efficiency result from improvements in present procedures or personnel in the existing form? The study commission should look at similar communities to determine whether the same form has been capable of greater efficiency.
- (2) Is the alternative form inherently more efficient, or has it worked more efficiently only in certain kinds of communities? The study commissioners will have to compare their community to those in which the alternative form may be working more efficiently.

Secondly, the study commissioners must make the following decision: should they apply the evaluation base to create what they believe to be the best form for the community; or, based on the criteria, should they attempt to explain the advantages and the disadvantages of different forms to the public, and then receive its judgment? Throughout these deliberations, each study commissioner will have to balance his dual responsibility as

a trustee exercising independent judgment, and a delegate mirroring constituent interests. The process of open hearings should be fully utilized so that these roles can be combined as much as possible.³⁶

The example of efficiency can be used again to explain the possible dilemma faced by study commissioners in the above respect. They may decide that a particular form of government provides the most in services at the cheapest per unit or per capita cost. They may recommend this form because it is the most efficient. The general public may decide, however, that the existing form is preferable, even with its inefficiency, because they believe it to be more responsive to citizen need. The study commission can then decide to campaign for the principle of efficiency as the cornerstone of government, attempting to explain that efficiency and responsiveness can be found in the same form; or they may decide to respect the desires of the general public on the matter. The criteria themselves cannot solve this dilemma for the study commissioners: the objectives must be tied to the nature of the community and the wishes of its citizens.

Conclusion

A complex task lies ahead for those commissions which intend to take full advantage of the potential of the review. Because the review process can have several objectives, commissioners may wonder where to begin and what to look for. This chapter has suggested some guidelines for evaluation of community characteristics and objectives of local government forms. Guidelines are simply that. The usefulness of suggestions offered herein will depend on each individual local community and the perspective of its study commissioners. This discussion provides no answers, only some appropriate questions; investigating the variables and applying the criteria

will not necessarily guarantee successful review. It is entirely possible that study commissioners will have other ideas for conducting the review. But, study commissioners who attempt to accomplish the tasks set out in this chapter should feel confident that they have fulfilled the mandate of Montana's voter review of local government.

It is assumed that each study commission has the flexibility to create a form of government ideally suited to its community needs. Therefore, study begins with an assessment of those needs by means of description of the present state of the community. These findings can then be compared with community goals. Following this sequence of activity should help to guarantee that the present form of government receives exhaustive scrutiny. It may be found entirely consistent with community goals and retained. However, if the present government is examined and found unsuitable for the achievement of these goals, recommendation of an alternative form is necessary. The following chapters discuss the alternative forms and cooperative arrangements made available by the Montana Legislature.

FOOTNOTES

¹Size has been identified as the single most important background characteristic affecting the structure of local governments. See Jeffrey K. Hadden and Edgar F. Borgatta, American Cities: Their Social Characteristics (Chicago: Rand McNally, 1965), p. 40; and James W. Clarke, "Environment, Process, and Policy: A Reconsideration," American Political Science Review, LXII (December, 1969), pp. 1172-1182.

²Committee for Economic Development, Research and Policy Committee, Modernizing Local Government (New York: The Committee, 1966), p. 40.

³Howard Hallman, Governments by Neighborhoods (Washington, D.C.: Center for Governmental Studies, 1973), p. 24.

⁴As an example of correlation between size of unit and form of government, it is instructive to note that in all U.S. cities the mayor-council form outnumbers the council-manager form by approximately three to two; in cities over 10,000 the rate is about even; in cities over 25,000 the council-manager form is favored three to two. International City Management Association: The Municipal Yearbook, 1973. (Washington, D.C.: The Association, 1973), p. 4. For example of a study which correlates community size and population composition with a number of other variables such as citizen participation, political structure and the distribution of power in the community, see: Laura M. Morlock, "Business Interests, Countervailing Groups and the Balance of Influence in 91 Cities," in The Search for Community Power, ed. by Willis D. Hawley and Frederick M. Wirt (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1968), pp. 309-328.

⁵Robert L. Lineberry and Edmund P. Fowler. "Reformism and Public Policies in American Cities" in Cities and Suburbs, ed. Bryan T. Downes (Belmont, California: Wadsworth Publishing Company, Inc.), p. 370.

⁶For example, it is important to note that some counties in Montana have no road levies whatever while in others the mill levy figure for roads exceeds that of the general fund levy.

⁷One study found a significant correlation between middle/upper social class and the council-manager form of government in 49 towns around Chicago. Edgar L. Sherbenow "Class Participation and the Council-Manager Plan," Public Administration Review, 21, (1961) pp. 131-135; and Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," in Social Change and Urban Politics: Readings, ed. by Daniel N. Gordon (Englewood Cliffs: Prentice-Hall, Inc., 1973), pp. 111, 115.

⁸An important study focusing on the single outstanding example of rural-urban consolidation is: William C. Hayard and Floyd L. Corty, Rural-Urban Consolidation (Baton Rouge: Louisiana State University Press), 1964.

⁹Decentralization of power has been a topic of discussion mainly in urban settings, but there is no reason to believe that county government in rural counties cannot be established on a modified "neighborhood" basis. See Mario Fantini and Marilyn Gittell, Decentralization: Achieving Reform (New York: Praeger Publishers, 1973).

¹⁰For a discussion of alternative forms relating to special features of Montana population distribution, see James J. Lopach and Lauren S. McKinsey "New Alternative Forms of Local Government." Occasional Papers in Local Government No. 2, edited by Peter Koehn (Missoula: University of Montana, Bureau of Government Research, July, 1974).

¹¹The subject of individual commitment to local values and ideals in different kinds of communities is treated in a number of studies. See, especially, Frederick M. Wirt, et. al., "Orientations Toward Community and Politics" in On the City's Rim: Politics and Policy in Suburbia (Lexington, Massachusetts: D.C. Heath and Company, 1972); and James Q. Wilson and Edward C. Banfield, "Public Regardness as a Value Premise in Voting Behavior" in American Political Science Review 58 (December, 1964), 876-887.

¹²James S. Coleman, "The Setting and the Initiation of Controversy in Local Communities" in Cities and Suburbs, ed. Bryan T. Downes (Belmont, Calif: Wadsworth Publishing Company, Inc., 1971), pp. 125-146.

¹³Data compiled by the State Commission on Local Government from Clerk and Records Financial Reports, December 12, 1974; and International City Management Association, The Municipal Yearbook: 1973. (Washington, D.C.: The Association, 1973), pp. 102-103.

¹⁴Montana, Twenty-Fifth Biennial Report of the Montana State Board of Equalization (Helena, Montana: State Board, 1972) p. 11.

¹⁵Richard P. Nathan, et.al. Monitoring Revenue Sharing (Washington, D.C.: The Brookings Institution, 1975).

¹⁶Data compiled by the State Commission on Local Government from Clerk and Records Financial Report, December 12, 1974. One source warns that for states like South Dakota and Montana, which benefit greatly from federal aid in cost-sharing programs, the switch to revenue sharing could produce significantly less money overall for local communities. William O. Farber, "Revenue Sharing: Trick or Treat," Public Affairs (Vermillion, South Dakota: University of South Dakota, Governmental Research Bureau).

¹⁷For a comprehensive treatment of why governmental transitions succeed and why they fail, see Scott Greer, Metropolitics: A Study of Political Culture (New York: John Wiley, 1963); or John Bollens and Henry Schmandt, The Metropolis: Its People, Politics, and Economic Life (New York: Harper and Row, 1965). The factors, including the roles of ordinary citizens, good government groups, organized interests, public officials will be similar for non-metropolitan settings as well.

¹⁸For an example of methodology involved in elite analysis, see Clark, "Community Structure, Decision-Making and Public Policy in Fifty-one American Communities," in Cities and Suburbs, edited by Bryan T. Downes (Belmont, California: Wadsworth Publishing Company Inc., 1971), pp. 400-425. Clark has pioneered studies comparing community variables with leadership patterns that lead to different kinds of policy decisions in comparable communities.

¹⁹Thomas A. Flinn. Local Government and Politics (Glenview, Illinois: Scott Foresman and Company, 1970), p. 57.

²⁰David G. Temple, Merger Politics: Local Government Consolidation in Tidewater, Virginia (Charlottesville: University of Virginia Press, 1972), p. 69.

²¹General control is the term applied to the costs of running the governing body itself. According to the 1967 Census of Governments, Montana counties spend 22 per cent more than the national average for general control. Montana Association of Counties, Montana Counties on the Move (Helena: The Association, 1974).

²²Columbia Research Institute, Approaches to Local Government Reorganization (Portland, Oregon: Columbia Research Institute, 1970), p. 15.

²³This holds for Montana counties. The 21 smallest counties exceeded the state average for general control by 75 per cent. Prepared for the Montana Interim Committee on Fiscal Affairs, Montana Fiscal Affairs Study, (Missoula: University of Montana, Bureau of Business and Economic Research, 1970), pp. 177, 202.

²⁴Montana Association of Counties, Montana Counties on the Move. (Helena: The Association, 1974).

²⁵See, for example, Advisory Commission on Intergovernmental Relations, Regional Governance: Promise and Performance. Washington: U.S. Government Printing Office, May, 1973. Note especially the discussion of Dade County by Aileen Lotz: ". . . it is a mistake to believe that a reorganization of local government will reduce costs and lowers taxes." p. 11.

²⁶International City Manager's Association, Checklist on How to Improve Municipal Services, Chicago, The Association, 1958).

²⁷Ibid.

²⁸A study of city councils in 37 St. Louis county suburbs found a high correlation between social rank of the community itself and social status of the elected council members. Bryan T. Downes, "Municipal Social Rank and the characteristics of Local Political Leaders," in Midwest Journal of Political Science, XII (1968).

²⁹See Norton E. Long, The Unwalled City: Reconstituting the Urban Community (New York: Basic Books, 1972), p. 93.

³⁰For a complete discussion of how the principles of local government can be traced to the philosophies of the founding fathers, see: Anwar Syed, The Political Theory of American Local Government (New York: Random House, 1966).

³¹One study concludes that municipal policies will be more conservative in non-partisan communities and that Republicans are more likely to win elective office in middle and large sized cities under conditions of non-partisan elections. Willis D. Hawley, Non-partisan Elections and the Case for Party Politics (New York: John Wiley and Sons, 1973), p. 143. Another study notes that lower turnouts in local politics as a result of non-partisan elections means that the "good government" reform movement has actually served to undermine citizen participation. Charles M. Bonjean, et. al. Community Politics (New York: The Free Press, 1971), p. 84.

³²For an example of an explicit methodology to determine responsiveness of city council members to community needs, see Heinz Eulau and Kenneth Prewitt, "Labyrinths of Democracy: Adaptations, Linkages, Representation and Policies," in Urban Politics (Indianapolis: The Bobbs-Merrill Company, Inc., 1973), p. 649.

³³One study of reform concludes that reforms such as "non-partisan elections, at-large constituencies and manager governments are associated with a lessened responsiveness of cities to the enduring conflicts of political life." Robert L. Lineberry and Edmund P. Fowler, "Reformism and Public Policies in American cities," in American Political Science Review, LXI: 3 (September, 1967), p. 715.

³⁴See James C. Preston, "Information for Local Action--Is it Beyond A Laymen's Grasp?" (New York: Cooperative Extension, Cornell University, 1974), pp. 8-9.

³⁵Terry Clark concludes that while large and diversified cities may be in greater need of centralized leadership, these cities more often correlate with decentralized decision-making. Reform is also negatively correlated with decentralized decision-making, meaning that a community with a plurality of elites will likely not create a system with stronger leadership capability. Clark, "Community Structure, Decision-Making and Public Policy in Fifty-one American Communities," in Cities and Suburbs, edited by Bryan T. Downs (Belmont, California: Wadsworth Publishing Company, Inc., 1971), p. 442.

³⁶Study commissioners concerned with the possible success of their recommendations are urged to read: Advisory Commission on Intergovernmental Relations, Factors Affecting Voter Reactions to Governmental Reorganization in Metropolitan Areas, Report M-15 (Washington, D.C.: U.S. Government Printing Office, 1962).

CHAPTER VI

FORMS OF LOCAL GOVERNMENT IN MONTANA

The voter review process in Montana primarily is concerned with forms of local government. Under Article XI, Section 9 of the Montana Constitution, each county and municipality in the state is required "to review its structure and submit one alternative form of government to the qualified electors. . . ." As we have seen, delegates to the 1971-72 Montana Constitutional Convention thought it worthwhile that Montana residents periodically be given an opportunity to change their form of local government. To appreciate the full meaning of the constitutional mandate, it is necessary to understand exactly what a governmental form is and how it relates to other features of a local government.

What is a Form of Government?

The distinction is made in Article XI, Section 9 of the Montana Constitution between structure and form. In addition, governmental form should be distinguished from the powers aspect of local government. The meaning and relationship of these terms will be discussed below.

The Montana Legislature has defined "structure" as the "entire governmental organization through which a local government unit carries out its duties, functions and responsibilities."¹ Structure is a more encompassing term than form; it refers to elective and appointive positions; departmental organization and procedures; and boards, commissions, and committees. It is the total machinery through which a local government does its work.

The term powers, on the other hand, can be distinguished sharply from both form and structure. A governmental power is an authorization to act. The authorization comes from some superior source of power, such as the state constitution or the state legislature. It can take one of two forms:

a delegation or direct grant of power; or a residual authorization, an indirect grant of authority which is available unless specifically denied. Governmental powers, of course, are exercised through the governmental structure,

A governmental form is one aspect of governmental structure; it is the structural component which has closest relationship to governmental powers. A form of local government primarily has to do with three things: the municipality's or county's governing body which exercises the governmental powers; the means of executing or carrying-out the governing body's actions; and the administration of governmental activities. A good working definition is the following: "'Form of government' relates primarily to the organization of the legislative and executive branches of counties, municipalities, and townships."²

One reason for the importance of a governmental form is its close relationship to powers; thus, a form "may influence the powers of government to be exercised either for general and unifying purposes or for sectional and diversive purposes, and it may otherwise implement or impede efficient management."³ Forms of government at the local level, therefore, refer to the specific complexions of the local government legislative body and executive office, and to the degree of separation between these two fundamental functions.

Con Con, the Legislature, and Optional Forms

The local government committee of the 1971-1972 Montana Constitutional Convention, as noted in Chapter III, thought that the state's counties and municipalities should have a wide variety of forms of government from

which to choose. As a result, the Montana Constitution provides in Article XI, Section 3 that "the legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon. . .by a majority of those voting on the question." The Montana Legislature, during its 1975 session, carried out this constitutional mandate in a very thorough fashion. Montana municipalities and counties now have available to them under state law practically any governmental form that is in use in the United States. The voter review process presents the first opportunity for Montana local government units to consider adopting one of these forms,

Optional Forms

During its 1975 session, the Montana Legislature enacted into law five basic optional forms of local government, plus a charter form. The optional forms, as a general rule, may be adopted by either a county or a municipality during the voter review process. The charter form also is available during the review process as part of a self-government charter designed and written by the local government study commission of a municipality or county. It is important to note that under Montana law there no longer are designated governmental forms which are specifically restricted for use by counties or by municipalities. Any authorized form of government with the exception of the town meeting form can be used by either kind of government unit.

The five optional forms of local government are: commission-executive, commission-manager, commission, commission-chairman, and town meeting. The difference between these five governmental forms primarily consists of the

nature of their legislative and executive branches and the degree of separation between these two key functions in each form. Each form can be differentiated further by adopting one of a number of choices under various structural suboptions. It is through the combination of the five basic optional forms and the many structural suboptions that virtually any local governmental form in the United States can be reproduced in Montana. The optional forms will be discussed below in detail.

Structural Sub-Options

A form of government, as we have seen, primarily is a matter of the nature and arrangement of the policy making and administrative functions. The Montana Legislature has provided counties and municipalities with probably the widest choice of forms that exists in any state jurisdiction in the nation. And, going even further, legislators have made it possible for counties and municipalities to embellish this rather exhaustive selection of executive-legislative relationships by permitting variation in each of numerous structural sub-options. These suboptions relate directly to the legislative and executive functions and they can be used to give a more specific focus to the governmental form.

There are twelve structural sub-options that, for the most part, can be used to modify and define the five optional forms. These suboptions apply to:

1. Partisan or non-partisan election of officers;
2. Term of office of elected officers;
3. Presiding officer of the legislative body;
4. Concurrent or overlapping terms of office of commissioners;

5. Budget authority of chief executive;
6. Appointment power of chief executive;
7. Veto power of chief executive;
8. Appointment of administrative assistants;
9. Selection process of chief administrative officials;
10. District or at-large commissioner elections;
11. Size of the legislative body; and
12. Use of community councils to advise the legislative body.

The implications of choices under each suboption--their effect on the operation of governmental forms--will be covered below in the separate discussion of each optional form.

Cooperative Arrangements

The Montana Legislature, during its 1975 session, permitted counties and municipalities still another dimension to their form of government. In addition to selecting an alternative form of government during the voter review process, study commissions can choose from six kinds of inter-governmental or cooperative arrangements. These six arrangements provide for considerable variation in the extent of required cooperation and, thus, in the amount of adjustment they require in a given local government situation. Such cooperative arrangements have a direct and significant impact on governmental structure. But, although important, their effect on governmental form is more subtle and indirect. For example, the degree of cooperation present--that is, of governmental responsibility newly assumed or relinquished--will certainly have some bearing on choice of governmental form.

The 1975 Legislature, therefore, allowed counties and municipalities to consider the following six cooperative arrangements during the voter review process:

1. County-municipality consolidation;
2. County-municipality confederation;
3. County-county consolidation;
4. County consolidation including municipalities;
5. Service consolidation or transfer; and
6. Disincorporation.

The relationship of these structural arrangements to the voter review process and to the consideration of optional forms of government will be discussed in Chapter VII.

Table I shows the extent of the availability of the various optional forms and cooperative arrangements to cities, towns, and counties, and how they can be combined in a study commission recommendation for inclusion on the ballot of the review referendum (see Table I).

Optional Forms of Local Government:
Montana's Cafeteria Approach

Montana's 182 municipal and county study commissions have been given unprecedented latitude in recommending structural changes in their local governments. This flexibility in choice allowed by the legislature will be especially advantageous when the study commission's recommendation of an alternative form is based upon thorough research and analysis. Lacking such detailed preparation, the array of optional forms and sub-options could be a pitfall. A form could be recommended and adopted which has features that are not fully appreciated or that might not be warranted by

TABLE I

POSSIBLE COMBINATIONS OF FORMS, SELF-GOVERNMENT POWERS, AND COOPERATIVE ARRANGEMENTS AND THEIR AVAILABILITY TO LOCAL GOVERNMENT UNITS

	ALL UNITS					MUNIS. *
	Commission-Executive	Commission-Manager	Commission	Commission-Chairman	Charter Form	
City-County Consolidation	X	X	X	X	X	Town Meeting
Confederation	X	X	X	X	X	
County Consolidation with Municipality	X	X	X	X	X	
Service Consolidation and Transfer	X	X	X	X	X	X
Self-Government Powers	X	X		X	X	X
County Consolidation	X	X	X	X	X	
Disincorporation						

*Town meeting form is available only to incorporated cities and towns of less than 2,000 persons.

the community's situation.

Each study commission has the initial responsibility of assessing the present and future public problems and needs of its community and relating these findings to the existing governmental structure. The preceding chapter explained important relationships between some community variables and different aspects of forms of government. A study commission should use this kind of analysis to lead it from an appreciation of the strengths and weaknesses of its present form of government to a decision about the best alternative form of government for its county or municipality. This chapter discusses the five optional forms of government now available in Montana and their accompanying structural sub-options. It describes the central characteristics of each form and possible implications of its adoption for the community. Accordingly, this chapter is meant to assist study commissions in relating their research conclusions about the community's situation and the present government's performance to their choice of a recommended alternative form of government.

Commission-Executive Form

Probably the most familiar form of government that Montana municipalities and counties can adopt is the commission-executive form. The mayor-aldermanic form of government, which presently is used by 123 of Montana's 126 municipalities, is one version of the commission-executive form. The familiarity of this form is also due to the fact that the legislative and executive branches of both the national and Montana governments resemble the commission-executive form.

Required Features. The commission-executive form, as it appears in

Montana law,⁴ should be analyzed in two parts. The basic framework of the form, which is mandatory if the form is adopted, is discussed first. These required features consist of an elected policy-making or legislative body, called the commission, and a single chief executive official who is elected on an at-large basis.

The executive is given by law a basic amount of power which guarantees the position significant administrative authority. For example, the executive is charged with the responsibility of enforcing local laws; administering the affairs of the local government; directing, supervising, and administering all departments and agencies; and executing the budget.⁵ Because of this broad grant of administrative authority, no local government executive under Montana law can be forced to share major responsibility for the daily operation of the county or municipality with the commission. Montana will not have, as a result, critically weak executives because of statutory requirements.

Optional Features. The second part of the commission-executive form, as it appears in Montana law, concerns choices among options in several categories that relate to characteristics of governmental structure. During the review process, the study commission can select one option in each category. Broadly speaking, this can either strengthen the executive's power vis-a-vis the commission or strengthen the position of the commission at the expense of the executive. The exercise of these options, it should be emphasized, cannot affect the base level power of the executive provided by law.

Some of the optional features strike right at the heart of the division of power between the executive and the commission. A study commission

could provide for an executive with very strong powers, for example, by selecting sub-options with the following formulations: mandatory administrative assistant; an appointed financial officer; substantial power to appoint and remove department heads and employees; veto power to be overridden only by a two-thirds vote of the commission; sole responsibility for preparing the budget; and sole responsibility for controlling and supervising departments and boards.⁶ On the other hand, a study commission could just as easily turn the formulation of these optional features back the other way, thereby leaving the commission with the balance of power in these areas.

Other optional features of the commission-executive form apply more to the operation and responsibility of the commission, but formulations of these structural aspects also could favor the position of either the commission or executive. The commission, for example, could emerge as a relatively stronger body than the executive if the study commissions used sub-options in the following manner: some or all at-large commissioner districts; the chairman of the commission being a member of that body; the presiding officer of the commission being the chairman-commissioner instead of the elected executive; overlapping commissioner terms creating a continuous body; and a small-size commission. As with optional features concerning the executive office, these commission-oriented sub-options can be formulated to strengthen either branch. They could, therefore, be turned around in favor of the executive and in the process weaken the commission's overall independence and strength.⁷

Montana law provides for other optional features under the commission-executive form that are more general in nature and have less to do directly

with the strength of either the commission or executive. For example, local government elections can be partisan or nonpartisan; community councils for advising the commission can be optional or mandatory; and elected officials' terms of office can be set for up to four years.⁸ While alternatives within these optional features can be selected so as to strengthen the commission or the executive office, no formulation can be said to have such an effect in a uniform, consistent or predictable manner and at the specific expense of the other branch. These three optional features, therefore, are less significant with respect to their structural implications. But, the partisan-nonpartisan alternative can have important political ramifications which will be discussed below.

One other optional feature of the commission-executive form remains. The Montana Legislature provided that this governmental form could exercise either general or self-governmental powers.⁹ The legislature's judgement was that this governmental form was sufficiently rationalized in terms of its division of fundamental responsibilities and balance of burdens that either type of power authorization could be recommended. The choice would be left to the study commission.¹⁰

Evaluation of Form and Significance of Sub-options. Under the provisions for "Commission-Executive," Montana law permits many variations within a basic form of government. These structural possibilities range somewhere between what are commonly referred to as the "weak mayor" and the "strong mayor" forms. An arrangement that tends toward the strong executive pole has the primary characteristic of clear division between executive and legislative functions. On the other hand, a structural arrangement that tends toward the weak executive pole is characterized by

a merging or blurring of executive and legislative functions. But, under any variation of the commission-executive form, there is always an elected executive who is separate from the legislative body.

A weak executive-council form would be characterized by the following structural features: veto and budget powers limited or denied; supervisory power being shared among commission, boards, and executive; executives serving as chairman and/or presiding officer of commission; a large legislative body; and direct election of lesser administrative officials. Such structural provisions result in a diffusion of administrative authority. The person who is called the "executive," therefore, really is not empowered to be an effective executive and administrator.

Depending on perspective, the same basic feature of the weak executive form of government can be seen as an advantage or disadvantage. The absence of clear boundaries delineating the responsibilities of the executive and the legislative body means that an impasse between two strong and independent branches of government is unlikely. Under a weak executive form, governmental activity is bound to be more gradual in pace and moderate in tone because responsibility for initiating projects and making decisions is spread around.

But problems can result when lines of authority are not clearly distinguished. Structural blurring can create confusion and conflict. As a result, a weak executive form means ambiguous lines of authority and governmental activity that has been prefaced by a considerable amount of adjustment and compromise.

These characteristics of the weak executive form also stand in the way of clear and decisive administrative activity and independent policy

making. Members of the legislative body share administrative powers with the executive, and members of autonomous boards and commissions share policy-making powers with the local legislators. As a result, policy making is not isolated and can be conflicting; administrative supervision tends to be uncoordinated and even lax; and policy leadership is non-existent or confusing because of the excess of persons with administrative power.

Features of the strong executive form of government work against side effects such as these. The executive is "strong" because the office possesses undiluted veto, budget making, appointing, and supervising powers. Moreover, the strong executive form is characterized by the following structural features: strict separation of executive and legislative functions, a small legislative body, and appointment of lower administrative officials. This form provides for an executive in fact as well as in name and, the responsibilities of the commission are restricted to policy-making. As a result, there can be no doubt about the location of power and accountability.

Because power is concentrated under this form, it is likely that the executive will be a prominent political figure as well as a strong administrator. Day-to-day control of governmental detail will keep the executive in the public eye. Comments on the progress of local government and suggestions for new policy directions will be expected to come from this office. The commission, consequently, will have to reckon with these well publicized statements. Under this form, there is likely to be public debate on major issues--even heated give and take--and quick action or no action is more probable than a crawling pace of governmental activity.

It is important to note that the use of partisan elections could

either intensify an executive-legislative stand-off or bring the branches closer together and allow for quicker and more decisive governmental activity--although single party control over both branches does not guarantee that elected officials will share a unified outlook on public policy decisions. In addition, there is some evidence that nonpartisanship favors commission candidates who have many organizational ties and are, in general, better off financially,¹¹

The strong executive form might appear as a politically unwise or extreme arrangement to some people, giving too much governmental power to one person and placing that person too much in the public eye. In light of this, some may feel that the selection of a non-professional executive by the election process is unwise. The strong executive also could smack of old-time bossism: political popularity overshadowing administrative ability and strong appointing power being used for patronage purposes, that is, rewarding friends and supporters.

On the other hand, the strong executive's concentrated power and attendant visibility may be considered a blessing. A county or municipality experiencing serious and unmet public problems might feel the need for decisive policy leadership and coordinated administration of governmental affairs. An official who could fulfill these requirements might be able to galvanize a legislative body into action and stimulate substantial public backing for a new policy direction. The executive could be required to appoint a chief administrative officer and other aides for areas needing special training. In fact, the threat of extreme activity or unchecked ventures could be diminished by the clear accountability of the executive and the presence of an independent legislative body. Some communities,

therefore, may find such a form in line with their needs and liking.

In general, the commission-executive form is attractive to communities that want their chief administrative official to be one of their own. Beyond this "native flavor" feature, the form can be adapted to achieve different goals. It can embody either clean lines of authority and built-in pressures for action, or it can tend to favor shared responsibilities and drawn out, delayed governmental responses to problem conditions.

One other side effect of the commission-executive form deserves mention. Research has shown that a high percentage of strong executives (33 per cent) in 729 cities surveyed did not run for re-election. Also, only 49 per cent of cities with a strong executive form had an incumbent in office.¹² This data lends support to the view that a strong elected executive may not be an experienced administrator. The claims of manager form advocates, accordingly, take on even more interest with respect to the manager's professional qualities.

Commission-Manager Form

In both municipalities and counties throughout the nation, the commission-manager form of government continues to be the goal of most reform movements.¹³ Especially applicable to municipalities, the following broad statement sums up the situation regarding adoption and rejection of forms of government: the commission-executive (mayor-council) plan is decreasing; the commission-manager (council-manager) plan is growing steadily; and the commission plan is dying out.¹⁴

In Montana, the manager plan has been given a limited trial. Only Petroleum among the state's 56 counties has this form, and only three of

Montana's 126 municipalities--Helena, Bozeman, and Great Falls--have a manager as the chief administrative official. Nevertheless, three of Montana's six cities with populations in excess of 18,000 have the city-manager form. The manager form, as described in Montana law, is typical of its appearance in other states in the nation. Its adoption in Great Falls in 1972 was accompanied by claims familiar to city manager campaigns elsewhere in the United States,¹⁵

Required Features. Similar to the commission-executive plan, the commission-manager form's statutory provisions consist of both mandatory and optional features. Unlike the commission-executive form, however, the mandatory features of the manager form are more exhaustive and thus firmly fix in law the nature and relationship of the administrative and policy-making functions. The optional features, accordingly, can have a far less significant impact on the complexion of the form in any community which adopts it,

Montana law spells out, for example, that an appointed manager is the chief administrative officer of a local government. Specifically, the manager shall administer local governmental affairs; direct and supervise all departments and agencies; prepare and execute the budget; appoint, suspend, remove, and be responsible for all employees; and prepare the commission agenda.¹⁶ The law leaves no doubt as to who is in charge of running the government on a daily basis, and it admits of no dilution of this authority.

The commission under this form of government is, however, clearly in the driver's seat in terms of being responsible for the government's policies and direction. The commission is an elected policy-making body which

is the repository of all the government's powers. Commissioners appoint the manager on the basis of merit for an indefinite term and can dismiss the manager with a majority vote. But, while the manager is clearly responsible to the commission, commission members are prohibited from dictating appointments or removals or dealing directly with employees over whom the manager has control.¹⁷

Montana law, therefore, provides the basis for a strong chief administrative official and for strict separation between administrative and policy-making functions (under the commission-manager form of government). This set-up is mandatory for all local government units which adopt this form; there are no optional features which undercut its basic rationale of insuring a professional manager who is substantially independent of elected commission members.

Optional Features. The structural sub-options for the commission manager form pertain primarily to features of the legislative body. By making a selection under each category of sub-options, the flavor but not the essential character of the commission can be affected. While none of these alternatives can destroy the form's structural balance, some are alien to the traditional philosophy underlying this form.

With respect to the commission, Montana law gives a municipal or county local government study commission discretion with regard to: district or at-large elections or some combination of the two; partisan or non-partisan elections; a separately elected or internally selected commission chairman; concurrent or overlapping terms; length of terms of office (but not to exceed four years); and size of commission (though not less than three members).¹⁸

There is general agreement among supporters of the commission-manager form that the commission should be made up of a small number of members elected at-large in non-partisan elections for overlapping terms. Commission-manager advocates also argue that the commission chairman should be chosen by commission members from among themselves; as such, the chairman merely will be one among equals and possess no independent power base or enlarged community status.¹⁹ Montana law provides, however, that one of the commissioner-candidates can be chosen as chairman by the qualified electors or that the chairman can be selected as required by local ordinance.

Other categories of sub-options under the commission-manager form have a potentially broader structural impact than the preceding alternatives. For example, either the commission or manager can be given primary control over appointments to boards and agencies; community councils for advising the commission can be made optional or mandatory; and the commission-manager form can be equipped with either general or self-government powers.²⁰ Each of these three categories of sub-options has extremely important implications for the everyday operation of the form of government; none of them, however, affects the specific character of the commission-manager form.

Evaluation of Form and Significance of Sub-Options. The commission-manager form is designed to increase the chances that governmental power will rest in the hands of a few competent persons. The key feature of the form is the "professional" manager who is appointed by the commission members. Expectations for the form are based on the manager's abilities and duties.

Statutory provisions anticipate that the commission will appoint as manager a person who is a proven administrator. Unlike the election of an

executive official, the manager's appointment virtually precludes the possibility that an incompetent or an amateur will be the local government's chief administrative officer. When the manager has professional training and/or experience, the position's full complement of administrative duties and responsibilities should not, therefore, prove dangerously burdensome.

This almost total concentration of administrative power in the manager's office is expected to lighten the work load of the commission. As a result, different kinds of people might be attracted to run for a seat on the commission--business or professional persons, for example, who would be willing to spend a few hours a week in this job. Local government policy-making might, in turn, be placed in the hands of a few efficiency-minded and service-oriented local citizens.

Like the strong executive form, the commission-manager form of government possesses clear lines of authority and responsibility. The manager is in charge of administration and the commissioners do the policy making. Citizens should have the benefit, therefore, of coordinated administration, thoughtful and timely public policies, and easily assigned accountability. According to design, the commission-manager plan means competent people in office performing clearly designated tasks.

Some commission-manager sub-options under Montana law are usually treated by advocates as basic for achieving the form's goals. For example, it has been felt that the commission chairman should be chosen by fellow commission members instead of being selected by the voters. Separate election, it is argued, would give the chairman special status and visibility and thus create a potential rival for the manager. From this perspective, the manager should be the uncontested administrative head and

no commissioner should have a power base from which to launch unilateral criticism or make administrative incursions.

Additionally, the commission-manager plan was originally a reaction against the ward politics and personalized style of the weak-mayor form of government. As a result, a small-sized commission and at-large and non-partisan elections were initially presented as integral elements of the manager form. This was based on the argument that a large number of commissioners, each representing a small ward and owing allegiance to a political party, prevented the public interest from being expressed.

The experience has been, however, that political realities of a community--based as they are on social, economic, and other factors--cannot be rendered meaningless or inoperative by structural changes. If a community has a foundation of vigorous party politics, non-partisan elections will come to operate very much like partisan elections. Furthermore, if a community is substantially heterogeneous and the socio-economic distribution follows clear geographic patterns, then a small number of commissioners elected at large might thwart effective representation and frustrate local residents.²¹ In such a situation, and without doing damage to the plan of government, it seems that the advantages of a professional manager could be realized along with the benefits of partisan elections, district representation, and numerous commissioners. Purity of design makes little sense when it flies in the face of hard and intractable political realities.

One sub-option might prove successful in negotiating a workable middle ground between the traditional manager form and a heterogeneous community that has strong political ramifications. Community councils elected on a district basis could be used to convey the observations and suggestions of

citizens to either at-large or district elected commissioners. Theoretically, any commissioner would thereby be systematically informed of the needs and desires of all the community's residents.

The commission manager form also has its opponents. As is the case with other governmental forms, what some view as strengths, others see as weaknesses. For example, the manager's "professionalism" is sometimes seen as a smoke screen for a pro-business and upper-middle class bias. One study found that "managers and businessmen display similarity of style and taste" and that the manager's style of life "brings him into close association with segments of the business community."²² It also is contended that a manager has too much authority for a person who is not elected. The fact that the manager is appointed by elected commissioners is not seen as providing sufficient accountability.²³ The form is also criticized because it lacks a single elected official who can provide strong policy leadership--such status and activity is out of character for a manager and unlikely to be forthcoming from the multi-membered commission. Also, as a consequence of at-large commission representation, the manager form is faulted at times because citizens allegedly experience reduced accessibility to public officials. It seems that criticisms such as these are more likely to surface in communities that have a marked pluralistic composition or are undergoing significant changes and thus engendering major policy debates.²⁴

Commission Form

On the county side of Montana local government, the commission form is almost everywhere, being used in all but one of the state's 56 counties. But on the municipal side, the form resembles an extinct species. Not one

of Montana's 126 incorporated cities and towns now uses the commission form. The Montana situation is typical of the nation as a whole. While 85 to 90 per cent of the more than 3,000 counties in the United States use the commission form, only about four per cent of the nation's municipalities are governed in this manner.²⁵ Cities and towns apparently have not been comfortable with this traditional county form of government and probably have accepted the arguments about the form's inherent weaknesses.

Thus, the commission form is primarily a county phenomenon. In Montana, it is the only plan of government that is specifically mentioned in the Montana constitution. Article XI, Section 3 (2) reads:

One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator.

The 1975 Montana Legislature carried out the constitution's mandate and provided for this particular version of the commission form, along with other possible variations, as one optional plan.

Because of this form's widespread use in Montana and because the state constitution guarantees it continued status as one optional county form, it is important to understand its formulation in Montana law. This understanding is especially important, moreover, because the commission form is undoubtedly the most frequently criticized plan of local government in use in the United States.

Required Features. Unification is the theme of the commission form. Whereas the reputed strength of the strong executive and manager forms is separation of powers, the commission plan locates in the elected commissioners all legislative, executive, and administrative powers and duties. In cities and towns, these executive and administrative responsibilities may

be distributed among departments headed by individual commissioners.²⁶

Each commission, whether municipal or county, will have a "chairman" who will serve as the body's presiding officer.²⁷ The chairman is empowered to appoint members of boards with the consent of the commission. The chairman also votes as a member of the commission. Although the chairman is to be "recognized as the head of the local government unit," his power in no significant fashion exceeds that of the other commission members. The chairman's characterization, in fact, should be "simply . . . first among equals."²⁸

Optional Features. Montana law gives local government study commissions considerable discretion under the commission form to construct variations of the plan through the use of structural sub-options. Election mechanics for the commissioners are left flexible; at-large or district elections or some combination of the two can be used. In addition, elections can be either partisan or nonpartisan, and terms of office can be either concurrent or overlapping. The commission must have at least three members, but the law sets no maximum limit. Terms of office of elected officials are not to exceed four years, except that the commissioners elected under the county form authorized in the Montana Constitution may have terms of office of up to six years.²⁹

Other structural sub-options have to do with selection of the commission chairman, provision for administrative assistants, and use of community councils. The chairman can be a commissioner elected by the commission membership, elected by voters, or selected as provided by local ordinance. Administrative assistants and elected community councils for advising the commissioners can be either mandatory or optional.³⁰

One other optional feature, self-government powers, is not available under the commission form. Only general powers can be exercised by a commission government adopted as an optional form. The rationale for this limitation is that the broad scope of self-government powers potentially increases the burdens placed on a local government. An executive office separated from the legislative branch is held to be essential in order to secure necessary leadership and accountability under such circumstances.³¹

For reasons set forth above, there is a final set of sub-options under the commission form that pertains only to county and consolidated governments. Choices under these sub-options allow study commissions to reconstruct the traditional form of county government that is authorized in Article XI of the Montana Constitution. The commission form statute lists the following eleven county "row" offices: legal officer, law enforcement officer, clerk and recorder, clerk of district court, treasurer, surveyor, superintendent of schools, assessor, coroner, public administrator, and auditor. County study commissions are given a series of choices under each of these row offices whereby the position and selection process can be mandated or left to the discretion of the commission, or the position can be omitted entirely as a separate office. In addition, the commission is given the authority to consolidate two or more of the traditional county positions after they are established.³² With the array of choices contained in this set of sub-options, a county study commission can create a county government ranging from the traditional elected officials variety to a version where only the commissioners are elected and they appoint a few officials to carry out all the required row office functions.

Evaluation of Form and Significance of Sub-Options. The county

commissioner form of government traces its roots back to medieval England; structurally, it has remained essentially unchanged since the middle of the nineteenth century. The city commissioner form cannot claim so long a lineage. It had its beginning in 1900 in Galveston, Texas, after a hurricane damaged the city extensively. A commission of five local businessmen took over control of the city's government to expedite the rebuilding program. Because the commission performed admirably in that instance, other cities followed suit and adopted the form. But, today, the city commission form is definitely out of favor with reformers. Its inherent weaknesses, attributable to the lack of a single executive, are: little policy leadership, poor administrative coordination, poor accountability, and narrow administrative empires within the form. These points will receive further elaboration below.

The commission form of local government features consolidation of legislative and administrative functions in a few officials--the city or county commissioners. Reformers normally praise consolidation of the powers and duties of lesser local government officials, but they criticize this practice with respect to executive and legislative powers in the commission form. In this instance the disadvantages of combined functions--slippery accountability, poor coordination, and limited visibility--outbalance any advantages of reduced costs and operational efficiency.

The desirable qualities of the commission form appear to apply more to its use in counties than in municipalities. In a city or town that provides a variety of public services and experiences an average number of public problems, the presence of a single administrative official would seem to be important for coordinating programs and formulating and dis-

cussing new policies. On the other hand, in any county that still functions primarily as an administrative arm of the state and is little involved in independent program operation, the basic commission form might be a good plan of government.

The familiar Montana county structure with three elected commissioners and ten or eleven elected row offices might, therefore, continue to serve well in the state's predominantly rural and stable counties. The commission form in these areas means government by friends and neighbors. Officials are directly elected and often are re-elected, and thus are experienced, long-term public servants. They are native to the community and naturally reflect local attitudes and values. Their administration is characterized by an informal and familiar style. This kind of government--which contains the flavor of traditional American democracy--may be possible today in a few areas. If a predominantly rural county operating under the commission form needs to cut costs, row offices can be consolidated without destroying the character of the traditional commission form. In other counties and most municipalities, priorities such as cost reduction, program coordination, policy leadership, and clear lines of accountability make this loose and informal government unrealistic.

The sharp criticism directed at commission form is based primarily on its evaluation in an urban context. For most cities and towns and for counties experiencing growing service demands and expanding functions, the form's lack of unified executive leadership is viewed as critical. As living patterns become more complex and governmental responsibilities grow, the need for policy planning, administrative overview and control, reliable public information, and public accountability increases. The commission

form is not known for these qualities,

The traditional county commissioner form with its long line of row offices has also been criticized on the grounds that it is inherently inefficient and needlessly expensive. In Montana, voters elect, in addition to the commissioners, ten or eleven county officials who have primarily administrative rather than policy-making duties. For the most part, these officials operate autonomously, without formal coordination, and their duties often are not clearly defined. With ten or more row offices, duplication of responsibility can represent a considerable cost and often an irritating inconvenience to citizens who demand more formal and systematized government,

The Montana optional forms statute provides some means of minimizing these deficiencies in communities that are reluctant to give up this long-standing governmental form. As previously mentioned, the existence of row offices may be made subject to the commissioners' discretion and filled by appointment rather than by election. In addition, commissioners may consolidate established row offices. This flexibility might be used to cut costs, place the offices under the commission's executive control, and provide better coordination of related functions. The use of an administrative assistant also may be made mandatory for the commission, thereby building into the system a single focal point of administrative expertise and oversight. Advisory community councils elected from districts may also be used to provide some of the close community contact lost with the demise of elected row officers. And, it should be remembered, all counties will possess ordinance-making power as a result of the new state constitution and subsequent implementing action by the Montana Legislature. These

steps constitute more of a facelifting than a thorough modernization of the oldest of local governmental forms. But they should, to an extent yet unknown, help make a commission government somewhat more decisive, unified, and innovative.

One other structural sub-option has major potential significance for the commission form. A commission government could be radically transformed by requiring the election of a very large town or county commission--say, 100 or 200 members. By making use of the statutory absence of a maximum limit on the size of the commission, a modified town meeting government could be created.

Town meeting government is a form of direct democracy where each elector is, in fact, a legislator.³³ A modified or limited town meeting is a representative form of government, but the large number of representatives elected on a district basis still results in a town meeting effect. Citizens are in close touch with their representatives because of their large number, and many more citizens have an opportunity to serve on the commission.

The limited town meeting form often is used in New England states when the full town meeting becomes impractical because of a town's size or complexity of problems. The scaled down assembly is more conducive to problem solving. In addition, an administrative assistant is retained to help with the daily administrative detail. This situation can be replicated in Montana through the structural sub-options of the commission form. The commission chairman could serve as presiding officer of the assembly and could be assisted by an appointed chief administrative officer. Individual commissioners or committees of commissioners could oversee the

affairs of various departments. Most importantly, a large number of citizens could be directly involved in the community's actual governance.

Commission-Chairman Form

The commission-chairman form of local government offered by the Montana Legislature is an optional plan with which the state has no experience. In fact, this form of government is virtually unknown and untried in the nation as a whole. It is a hybrid of the commission and strong executive forms.

Required Features. This form features an elected commission and a commission chairman who is elected by all the commissioners from among their own number. Unlike the commission form, these commissioners possess only policy-making powers. The chairman is designated the "chief executive officer" and the "head of the local government unit." The chairman, moreover, is the presiding officer of the commission and, since he is elected by the citizens as a commissioner, has the same voting power as any other commission member.

Probably the most interesting feature of this form is that the chairman has complete legislative and executive powers, but serves only at the pleasure of the commission. The chairman, therefore, can be removed at any time by a majority vote of the commission and can be quickly replaced with some other commission member.³⁴

The authority of the chairman is by no means insignificant. The legislature extended to this position a "broad grant of executive and administrative powers."³⁵ In fact, the chairman is assured all the powers enjoyed by the executive in the commission-executive form, plus three

strong formulations of powers that are optional under that plan. The veto, however, is not made available. The chairman, accordingly, is authorized to administer local government affairs; supervise and control the operations of the unit's departments, boards, and agencies; prepare and execute the budget; prepare the commission agenda; appoint all department heads with consent of the commission majority; and unilaterally remove department heads and appoint and remove all other employees.³⁶ As a result of these unique mandatory grants under Montana optional forms, the office of chairman is the focal point of full legislative and substantial executive powers.

Optional features. The structural sub-options available to the commission-chairman form of government do not differ from those provided under other optional plans. But, the commission's relationship to the community and to the chairman can be altered significantly by using various combinations from the following categories of sub-options: at-large or district election arrangements; partisan or nonpartisan elections; concurrent or overlapping terms of office; discretionary length of terms of office (not to exceed four years) and commission size (not less than five members); and mandatory or optional community councils. The chairman can be given mandatory or permissive authority to hire administrative assistants to help run the local government who are "answerable solely" to the chairman. Finally, a commission-chairman government may adopt either general or self-government powers.³⁷ The following section will discuss the implications of these sub-options for defining and implementing the commission-chairman form in different ways.

Evaluation of Form and Significance of Sub-Options. In the virtual

absence of national or state experience with the commission-chairman form, any assessment must be based on logical analysis. But enough is known about specific features of local governments that certain judgments can be made about what to expect when these characteristics are found together. The overall conclusion concerning the commission-chairman form is that more problems than benefits may accompany its adoption.

The possible advantages of the form will be discussed first. It has been emphasized above that the identifying characteristic of the commission-chairman form is the granting of substantial executive power to one member of the commission. If the chairman and commission, or commission majority, are of one mind and/or one party, the stage could be set for decisive and unobstructed government. It is because of the fusion of legislative and executive powers in one person with its consequent basis for partnership government that this arrangement has been referred to as a "parliamentary form."³⁸

Rural areas could find especially beneficial the fact that the commission chooses the executive officer from its own membership, much as members of a parliament select the prime minister. If it is a valid assumption that most of the qualified and interested persons are already involved in government as commissioners in non-urban areas, then the commission could be the best source of executive talent. The commission-chairman form could leave in a reliable method of choosing a competent and knowledgeable executive for a community that wants a strong executive but feels it has a limited number of persons desiring the job.

Another possible advantage of the commission-chairman form is that the executive officer can be replaced quickly at any time by a majority vote of

the commission. Thus, if the chairman has seriously enraged the citizenry, or is out of touch with the needs of the community as interpreted by the commission, or lacks abilities that a problem situation demands, a regularly scheduled election is not required to make a switch. The commission, acting on its own initiative, could renew the vigor and effectiveness of the executive office by changing its chairman.

As in the case of other governmental forms, the same structural features can be viewed as the source of both advantages and disadvantages. Thus, the selection process and nature of the chairman's position cause uneasiness.

There is some doubt whether the form can assure proper accountability and adequate competence in the powerful position of chairman. This office possesses full executive and administrative powers, and yet the chairman is chosen by the commission. The chairman is, in fact, elected by the citizens, but as a commissioner and not as an executive officer. The voters, therefore, cannot specifically choose the person who has powers equal to those of the directly elected executive in the commission-executive form.

There also is reason to doubt that the commission's membership is a sufficient pool of executive talent. Even though the commission has a required minimum size of five, there always is the possibility that no commission member will measure up to the demands of the chairman's job. The availability of administrative assistants alleviates this problem to some extent, but the strong executive duties of the chairman's position seem to make a good argument for independent recruiting and separate campaigning.

The relationship between commission and chairman, by its very nature, could result in unstable government and there are possible arrangements under the sub-options that could aggravate this weakness. Because the powerful chairman retains office only at the pleasure of the commission, there is a very real possibility that the executive powers could be exercised in a flip-flop fashion. A commission could bring about rapid changeover in chairmen and, with these switches, a rapid reversal of administrative philosophy and policies. Yet, as we have seen, other forms have similar problems caused by the rapid turnover of key officials.

There are structural sub-options under the commission-chairman form that could almost insure this kind of start-and-stop government. Overlapping and/or short terms of office could result in frequent turn-over among the commissioners and the possibility of replacing the chairman frequently, either through direct election by the citizens or by the vote of new commissioners. Partisan elections could tip the scale in either direction. If commission and chairman were of one party, ties could be strengthened and stability enhanced; but if a commission majority and the chairman supported opposing party positions, this situation could lead to frequent rift and removal.

Two other possible structural alternatives illustrate the inherent difficulties of this governmental form. If district elections for commissioners are used, the chief executive officer of the county or municipality could be elected to the commission by a small part of the total community and retain, along with the executive powers, duties as representative of the single district. The problem of accountability is evident again and it is compounded by a possible conflict of interest. The chair-

man, as chief executive, could find himself facing administrative decisions that would favor residents of his commission district over other residents. For this reason, at-large election of commissioners is likely to be the most preferable arrangement under the commission-chairman form of local government.

Furthermore, community councils could be used and the chairman, in his capacity as a voting commissioner representing a district, could have a community council advising him. Thus, the predicament created by the fusion of legislative and executive powers in one person could be aggravated. Community councils, however, have inherent benefits that would be as valuable in this governmental form as in any other. They could, for example, keep commissioners in close touch with the needs and desires of the community's citizens.

Given the serious reservations about the commission-chairman form, namely, its thin line of accountability, limited recruitment source, and susceptibility to instability and conflict of interest, it seems doubtful that self-government powers should be exercised under it, although they are not precluded by statute. The form does not have sufficient rationalization on the grounds of separation of powers and administrative competency to warrant this grant -- and yet the form is so structured that the strong executive features and self-government powers seem almost automatically to go together. Indeed, recommendation of this form in any shape should be carefully considered, for it involves a major risk of either big success or big failure.

Town Meeting Form

The 1975 Montana Legislature made available to small towns an optional form of government that is based on the direct democracy model. Town meeting government is designed to alleviate one of the major problems often facing rural areas, that is, inadequate public discussion. In such communities, problems often do not receive thorough public discussion and governmental decisions frequently are arrived at through informal processes. Thus, "leading men" of the community "take the place of formal organizations to some extent."³⁹

When a local government body fails to place community problems on the public agenda, the town lacks a planning and problem-solving mechanism. Putting up with the status quo becomes a way of life. Small town government, as presently constituted, may be particularly susceptible to apathetic officials, bland discussions, and informal control. The needs of the citizens may get no hearing. Public officials assume little responsibility because decisions of any consequence are reached informally. Basic democratic values such as representation and responsiveness are often missing in small town governments. The essential features of the town meeting form are meant to reintroduce them into small town public affairs.

Required and Optional Features. Most of the features of the town meeting form are mandatory by law,⁴⁰ These features fall into the following major categories: the assembly or town meeting; identity of, and selection process for, official positions; the town chairman; the town meeting agenda; committees; and governmental powers. Each of these town meeting characteristics will be discussed below.

The "town meeting" itself is an assembly of all the qualified electors

of a town. The meeting possesses all the policy-making powers of the government. The town meeting, therefore, is the town's legislative body. This form is new to Montana, although it has been used for at least 200 years in New England. The state legislature has made it available only to incorporated cities and towns of less than 2,000 persons.⁴¹

If this local governmental form is adopted during the voter review process, the first town meeting will be run by the chairperson of the town's local government study commission. The annual town meeting is set by law for the first Tuesday of March, but special town meetings can be called by the town chairman or by petition of ten per cent of the town's electors. Ten per cent of the qualified electors make up a town meeting quorum. Persons other than qualified electors may attend the town meetings, but their participation is severely limited. They are not allowed to vote, and they cannot participate in discussion unless permitted to do so by a majority vote of the town meeting.⁴²

Official positions under the town meeting form have a different complexion from those under other optional plans. The annual town meeting, by means of a nonpartisan election and secret ballot, may select two town officers, the chairman and moderator. The incumbent town chairman first prepares for the town meeting a list of elective offices to be filled. The position of "town chairman" is mandatory and the person elected to this office by the town meeting must be a qualified elector of the town. The chairman's term is not less than one year or more than two years. The position of "town meeting moderator" is optional. The town meeting may elect a moderator for a one-year term to preside at annual and special town meetings, or the plan of government may require the town chairman to

perform this duty.⁴³

The town chairman serves as the "chief executive officer" of the town. Among other duties, he must: administer the town's affairs; supervise and control all of the town's departments and boards; appoint and remove all employees; prepare the town meeting agenda; and prepare the budget and present it to the town meeting for adoption. The important point here is that the town meeting form in Montana has a single executive position with substantial administrative powers. To assist the chairman in supervising and running town government affairs, a single administrative assistant "answerable solely to the town chairman" may be made mandatory or optional.⁴⁴

The town meeting agenda, which is prepared by the town chairman, must be posted at least two weeks prior to the meeting date of the annual or any special assembly. The town chairman, however, does not have exclusive control over what appears on the agenda. If ten per cent of the town's electors (but at least ten persons) file a written petition with the chairman seeking an agenda entry, then that particular item must be taken up at the next town meeting.

Montana law includes one more agenda regulation of considerable importance. An "other business" section may be part of a town meeting agenda, but finance or taxation matters are explicitly prohibited from being considered under that heading. Instead, these subjects must be treated as separate and clearly labeled agenda items. Montana law also provides that the town's local study commission will draw up the agenda for the first town meeting following the form's adoption.⁴⁵

The town meeting optional form statute deals with two additional matters, committee structure and governmental powers. The law does not

require any special committees. It leaves solely to the ordinance power of the town meeting the discretion to establish and dissolve permanent committees that will serve in an advisory capacity. The chairman can set up temporary committees for offering suggestion. Finally, the town meeting form can exercise either general or self-government powers.⁴⁶

Evaluation of the Town Meeting Form. The primary characteristic of the town meeting form is that citizens take direct part in policy-making and tax levying rather than leaving these public chores to a representative body. One of its main purposes is to overcome citizens' feelings of being estranged from the workings of their town government. An underlying assumption of the form is that a sense of belonging and control can be enhanced by a change in governmental structure,

This optional form may be suitable for Montana's small rural communities that are concerned with the private informality and lack of openness of the present governmental system. To determine whether the town meeting form will serve this end in Montana, New England's experience with the plan should be consulted. Town meeting government in New England has been both criticized and praised,

One fault found with this form is that the "town meeting met the needs of simpler earlier times, but was not designed to handle the complex modern problems confronting rapidly growing areas."⁴⁷ A town meeting is thus seen as an assembly of amateurs for whom budgetary and fiscal matters are too involved. Another criticism is that traditional town meeting government is "episodic" because of its once-a-year meetings and lack of a continuous and powerful single executive. It also has been charged that town meetings have been dominated by the power-bloc voting of town employees.⁴⁸ Other

critics have made the same point by indicating how citizen apathy and failure of citizens to participate allow vested interests to control town meeting procedures.⁴⁹ Finally, town meetings have been judged to be impractical and unwieldy forums for conducting a town's business simply because of their large size, especially in bigger towns.⁵⁰

But this system seems to have proven satisfactory where governmental services are neither numerous nor complicated. One student of the form has observed that "more and more urbanologists are turning to the New England town meeting for clues to the variables that shape and define authentic citizen involvement."⁵¹ A key advantage of this form lies in the ability of the town meeting to harness voluntary citizen energies for the good of the community. Interim ad hoc committees of citizen-legislators can be used to investigate problem areas and policy alternatives. A town meeting government can thus have a flexible bureaucratic framework to help it adjust to changing conditions. And, most importantly, citizens can be directly involved in these important overseeing and planning processes.

The cooperative spirit described above could already exist in a town, or the town meeting could provide a forum for stimulating its growth. Increased citizen participation in town affairs also could have other beneficial results: feelings of powerlessness among citizens could be diminished, and government services could be increased or made more responsive to community needs.⁵²

The critical observation about the New England town meeting, however, is that in some places it is a "healthy, functioning political system based on citizen participation." A study of the form in Vermont concluded "there seems to be overwhelming support for town meetings around the state,

at least from the town officers and those people who attend." Persons surveyed in this study did not favor structural changes in the town meeting form; instead, there was widespread support among Vermont citizens for improving the "instructional or educational aspects of the meeting."⁵³ These findings seem to argue that the town meeting may be uniquely appropriate for some small towns. In certain areas of Montana, where expectations of government are few and simple and where citizens feel nonetheless that government is distant and indifferent, the rare opportunity to experience direct democracy still exists.

The vehicle provided by the Montana Legislature to allow for town meeting government seems well designed to preserve the form's benefits and preclude many of its drawbacks. The preliminary work of the State Commission on Local Government attempted "to tailor the form to Montana and to mitigate some of the weaknesses in the traditional form,"⁵⁴ Five steps along these lines were taken. First, a single executive, the town chairman, was substituted for the New England form's cumbersome and ineffective plural executive, the board of selectmen. Secondly, the Montana form, unlike the New England form, has complete flexibility with respect to committee structure, thus allowing a community's particular situation to be reflected in its own system of advisory committees. The executive office of the Montana form is further strengthened by a third feature. The town chairman may have an administrative assistant to help out, for example, in especially technical or complex areas. Fourthly, under Montana law either the town chairman or a separate town moderator may serve as presiding officer of the town meeting. The role of town moderator can be used to effect formal separation of the conduct of the town meeting from the control of

officials involved in the everyday administrative detail of the town government. Finally, the Montana provision that tax and finance matters must appear as regular agenda items eliminates the chance that they will be dealt with by a narrow vested interest after the town meeting attendance has dwindled away.⁵⁵

These changes are so significant that it cannot be said that the New England town meeting has been transplanted to Montana soil. Rather, the older form has been pruned and new structural features have been grafted on to it. Montana's town meeting form permits small towns to weigh the merits of direct citizen participation, an advantage that these rural communities may hold over their big city cousins during the voter review process.

Conclusion

The Montana Legislature has provided local study commissions and citizens with a wide range of optional forms of local government from which to choose. There appears to be no other state in the nation that has given its counties and municipalities such discretion with respect to their governmental structure. In Montana, this flexibility has been achieved through the provision of five optional forms and twelve structural sub-options which can be combined in a myriad of arrangements.

The Legislature's action has fulfilled the intent of the 1971-72 Montana Constitutional Convention. Convention delegates believed that the voter review process would enable Montana citizens to design responsive and accountable local governments if a sufficient diversity of governmental forms were made available. The delegates contemplated a "cafeteria-style"

selection of forms from which counties and municipalities could choose. The 1975 Montana Legislature enacted such an approach into law, and now it is the task of the study commissions and citizens to tailor a governmental form to their community's specific needs.

The Legislature, moreover, gave Montana's counties and municipalities an even broader opportunity to restructure themselves than is permitted by the adoption of an alternative governmental form. A variety of cooperative arrangements for local government units was also made available. These are discussed in the following chapter,

FOOTNOTES

¹ Revised Codes of Montana 1947, 16-5102 (4).

² International City Management Association, The Municipal Year Book 1973 (Washington, D.C.: The Association, 1973), p. 3.

³ U.S. Advisory Commission on Intergovernmental Relations, State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government (Washington, D.C.: The Commission, 1962), p. 68.

⁴ Revised Codes of Montana, 1947, 47A-3-203.

⁵ Revised Codes of Montana, 1947, 47A-3-203 (2).

⁶ Revised Codes of Montana, 1947, 47A-3-203 (3) (a) to (f).

⁷ Revised Codes of Montana, 1947, 47A-3-203 (3) (g), (i), (j), (k), and (l).

⁸ Revised Codes of Montana, 1947, 47A-3-203 (3), (h), (l), and (m).

⁹ Revised Codes of Montana, 1947, 47A-3-203 (4).

¹⁰ See discussion of self-government powers in Chapters 1 and 7 for implications of this choice.

¹¹ See Terry N. Clark, "Power and Community Structure: Who Governs Where and When" in Community Politics, ed. by Charles M. Bonjean (New York: The Free Press, 1971), p. 180.

¹² See Eugene C. Lee, "City Elections: A Statistical Profile," 1963 Municipal Year Book. Chicago: International City Managers' Association, 1963, pp. 74-84.

¹³ See International City Manager's Association, The Municipal Year Book, 1973, (Washington, D.C.: The Association, 1973) and New County, U.S.A. Center, From America's Counties Today (Washington, D.C.: National Association of Counties, 1973).

¹⁴ Richard S. Childs, The First Fifty Years of the Council-Manager Plan of Municipal Government (New York: National Municipal League, 1965), p. 3.

¹⁵ See Ann Smoyer et al., The Great Falls Commissioner-Manager Referendum of 1972, ed. by Robert E. Eagle, Occasional Papers in Local Government No. 3. (Missoula: University of Montana Bureau of Government Research, (December, 1974).

- ¹⁶ Revised Codes of Montana, 1947, 47A-3-204 (1) and (3), (c), (d), (f), (1), and (m).
- ¹⁷ See Revised Codes of Montana, 1947, 47A-3-204, (1), (3), (4), and (5).
- ¹⁸ Revised Codes of Montana, 1947, 47A-3-204, (6), (b), (c), (d), (e), (f), and (g).
- ¹⁹ See Childs, The First Fifty Years of the Council-Manager Plan of Municipal Government.
- ²⁰ Revised Codes of Montana, 1947, 47A-3-204, (6), (a) and (f), (i) and (ii), and (7).
- ²¹ See Edward C. Banfield and James Q. Wilson, City Politics (New York: Vintage Books, 1963), pp. 132, 155-66.
- ²² See Lloyd M. Wells, "Social Values and Political Orientations of City Managers: A Survey Report," in Community Politics, p. 246.
- ²³ For this reason, voters in Greeley, Colorado amended their city charter in 1969 to provide that a referendum vote on the incumbent city manager must be held every six years. Although Montana study commissions could incorporate such a provision into a local government charter, most analysts hold that the Greeley approach seriously weakens, and may even negate, reasons advanced for adopting the form in the first place. See David Houghton, "A City Manager in Politics: A Case Study of a City Manager in Greeley, Colorado" (unpublished Ph.D. dissertation, University of Colorado, 1974).
- ²⁴ See Banfield and Wilson, City Politics, p. 140.
- ²⁵ See International City Management Association, The Municipal Yearbook, 1973, and New County, U.S.A. Center, From America's Counties Today.
- ²⁶ Revised Codes of Montana, 1947, 47A-3-205 (1).
- ²⁷ Revised Codes of Montana, 1947, 47A-3-205 (2) (c).
- ²⁸ See Montana Commission on Local Government, Local Government Review Bulletin, I:3 (November 8, 1974), p. 112.
- ²⁹ See Montana Constitution, Article XI, Section 3 (2).
- ³⁰ Revised Codes of Montana, 1947, 47A-3-205 (2) (c), (d) and (f).
- ³¹ Revised Codes of Montana, 1947, 47A-3-205 (4).
- ³² Revised Codes of Montana, 1947, 47A-3-205 (3).
- ³³ See discussion below in this chapter.

- 34 Revised Codes of Montana, 1947, 47A-3-206 (1) and (2).
- 35 Montana, Commission on Local Government, Bulletin, I:3 p. 119.
- 36 Revised Codes of Montana, 1947, 47A-3-206 (2) (c), (d), (f), (l), (m), (n), (o), and (p).
- 37 Revised Codes of Montana, 1947, 47A-3-206 (3) (a), (b), (c), (d), (e), and (f), and (4).
- 38 See Montana, Commission on Local Government, Bulletin, I:3 p. 119.
- 39 Banfield and Wilson, City Politics, p. 24.
- 40 Revised Codes of Montana, 1947, 47A-3-207.
- 41 Revised Codes of Montana, 1947, 47A-3-207 (1) and (2).
- 42 Revised Codes of Montana, 1947, 47A-3-207 (3) (a) and (b) and (10).
- 43 Revised Codes of Montana, 1947, 47A-3-207 (1) and (9) (a).
- 44 Revised Codes of Montana, 1947, 47A-3-207 (6) (c), (d), (i), (j), and (k) and (9) (b).
- 45 Revised Codes of Montana, 1947, 47A-3-207 (4) and (10).
- 46 Revised Codes of Montana, 1947, 47A-3-207 (8) and (11).
- 47 Committee for Economic Development, Modernizing Local Government (New York: The Committee, 1966), p. 30.
- 48 David A. Booth, "Massachusetts Home Rule," National Civic Review (February, 1972), p. 68.
- 49 James J. Haag, Forms of Municipal Government in the United States and Maine (Orono: University of Maine, 1970), pp. 25-26.
- 50 Ibid.
- 51 Frank M. Bryan, "Town Meeting Government Still Supported in Vermont," National Civic Review (July, 1972), p. 348.
- 52 See George Frederickson (ed.), Neighborhood Control in the 1970's (New York: Chandler Publishing Company, 1973) and Milton Kotler, Neighborhood Government (Indianapolis: Bobbs-Merrill, 1969).
- 53 Bryan, Town Meeting, pp. 348-349.
- 54 Montana, Commission on Local Government, Bulletin, I:3, p. 126.
- 55 Ibid., pp. 126-127,

CHAPTER VII

COOPERATIVE ARRANGEMENTS IN MONTANA: SHARING GOVERNMENTAL BENEFITS AND BURDENS

During the voter review process, local government study commissions have an opportunity to make structural recommendations that go beyond the scope of local government forms but are closely related to them. Montana law provides counties and municipalities with six different approaches to area-wide governmental reorganization. These include:

1. County-municipality consolidation;
2. County consolidation;
3. County consolidation including municipalities;
4. Confederation;
5. Service consolidation or transfer; and
6. Disincorporation.

As discussed in chapter V, the specific approach used will depend on the problems facing a community and the political climate surrounding different proposals. Normally, the extent of the cooperation proposed (and thus, the amount of autonomy a local government unit will retain), influences political acceptability. So, the nation has witnessed few consolidations but nearly every state has examples of sharing some office or function between or among two or more local government units. Each of the cooperative arrangements available under Montana law will be discussed below.

Consolidation.

Why Consolidation?

Counties and municipalities might contemplate consolidation for a number of reasons. Merger is usually motivated by the fact that there are simply too many governments in an area. In urban or rural areas, lack of

a clear definition of "who's in charge" and responsible for public activities can result from numerous local governments (including special districts). An excessive number of local governments can also mean that each individual unit is too small to perform its functions efficiently. Where these local governments overlap and perform similar functions, the possibility of service duplication exists. Similarly, where a consolidated government may be able to take advantage of economies of scale in services such as road maintenance, waste disposal, and law enforcement, the existence of several local government units can both obscure lines of responsibility and unnecessarily drive up governmental costs.

Two other consequences of too many local governments in an area are tax and service inequities and inadequate planning. These two situations probably contain more reform impetus than the other conditions caused by fragmented governments. Where local government boundaries do not coincide with actual service use and service need, non residents often take advantage of governmental services without direct tax assessment. For example, residents of urban fringe areas use city recreational facilities, drive on city streets, and increase the requirement for traffic control devices, although they do not pay city taxes. Unless there is areawide orderly growth planning, present tax and service inadequacies could continue far into the future.

Consolidated government also could allow area wide community values, latent and previously unarticulated, to be expressed in program terms for the first time. And, as a result of its single responsible governmental authority, it could strengthen a sense of community and the completion of duties in a fashion that reflects actual living patterns in the area.

Relationship of Consolidation to Form

The existence of certain community conditions thus argues for governmental consolidation. A related consideration is the form of government under which the consolidated unit will operate. Local government study commissions recommending some form of consolidation must consider the magnitude of the problems faced, the size of the geographic area involved, and whether these factors not only support the logic of consolidation but also point to a certain governmental form with specific characteristics. It seems likely that the form of consolidated government will be a product of unique social, political, economic, and geographic factors.

Study commissions recommending consolidation must consider structural features that are common to any form of government (see above, Chapter VI). The range of choice within each feature, however, is significantly qualified by consolidation considerations--for example, differences in population characteristics, present services, service needs, and governmental expectations. The central fact is that decisions concerning the form of government for a consolidated unit take on an added dimension; a single government must be able to perform in the place of two or more rather dissimilar forms of government. The presence of this basic tension in the consolidated form of government makes the designing of even its most basic features a difficult chore. The following questions therefore, have special significance for a study commission considering consolidation:

1. How should powers and functions be distributed among officials?
2. Which officials should be elected?
3. Which officials should be appointed?
4. What appointing process should be used?

5. Which departments should exist?
6. How should powers be distributed among departments?
7. Should general or self-government powers be authorized?
8. What kind of personnel system should be used?
9. What provision should be made for citizen involvement in the consolidated government?
10. What provision should be made for receiving and acting upon citizen complaints?
11. Should executive and legislative functions be separate?
12. Concerning the executive, what should be the selection process, powers, term of office, salary, and relationship to legislative body?
13. Concerning the legislative body, what should be the size, length, and sequence of terms of office, size of each member's constituency, salary, and relationship to executive office?
14. Should there be partisan or non-partisan elections?
15. How long should the terms of elected officials be?

Probably the three key structural characteristics of a consolidated government have to do with the governing body's size and selection process, the extent of legislative powers, and the nature of the chief executive's position. A consolidated government would seem to require a strong executive because of its larger administrative structure and the scope of community problems. The basic argument for consolidation--that a community could solve many of its major public problems by merging governments--would also seem to favor an elected strong executive or an

appointed professional manager as against a weaker administrative arrangement. Under the old Montana consolidation law, a merged city and county had no choice concerning its form of consolidated government. The law required the election on a non-partisan basis of three to seven commissioners who would retain a manager at their pleasure. Much greater flexibility in form is now possible.

With regard to the other key characteristics, it seems appropriate for a study commission to give full consideration to supplying a consolidated government with self-government powers. The lack of full ordinance-making authority for counties has been an obstacle to responsive government in the past.

These structural considerations, besides having added importance for a consolidated unit, can become vehicles of accommodation necessary for the ultimate success of the plan. With the new consolidated government growing out of at least two previously autonomous jurisdictions, the displacement it can cause in a community is extensive and established ways of doing things are threatened. Yet, the support or lack of active opposition from persons connected with prior forms is crucial, both for the plan's adoption and for its successful implementation and early operation. This support and cooperation can be secured more easily by accommodating their ideas on certain structural characteristics of the consolidation plan or by adjusting organizational details to win their approval. Flexibility in designing the form of the consolidated unit is essential in order to make these adjustments and compromises. Study commissions must decide whether optional forms are sufficient for this task or whether charter writing is necessary to accomplish this objective.

Consolidation under Montana Law.

The 1975 Montana Legislature laid down guidelines for three kinds of consolidation: merger of a county and one or more participating municipalities, of two or more contiguous counties, and of two or more counties and any municipality within a participating county.¹ During the voter review process, a consolidation question can be submitted to the voters along with an optional form for the proposed consolidated unit, but this action can be taken only by study commissions that have conducted a cooperative study of local governments. All three consolidation processes result in a single unit of local government. Under city-county consolidation and multi county-city consolidation, the consolidated unit will have the status and powers of both a county and an incorporated municipality and will be the successor to all of the participating units. The consolidated unit resulting from county-county consolidation has only county status and powers. Approval of city-county consolidation requires a simple majority of votes cast in the county involved (there is no requirement of separate majorities). A question of county-county consolidation or county-county-city consolidation requires a simple majority of votes cast on the question in each affected county for adoption.²

Any kind of consolidation is bound to be a complicated undertaking because a minimum of two governments will be merged into a single entity. The state legislature, accordingly, required that a consolidation plan accompany any of the three consolidation proposals permitted under Montana law.³ The plan can accompany an optional form of government or it can be a part of a self-government charter. Either way, it must receive the voters' approval before consolidation can occur.

The consolidation plan is the document which defines the basic character of the proposed merger. It includes the following: the method of equitably retiring all outstanding debt obligations of each participating unit; an authorization to set up special service and taxing districts; the method of transferring or disposing of the property and assets of each participating unit; the official name of the consolidated government; the status, under the consolidated unit, of all political sub-divisions and boards of each participating unit, or an authorization for the legislative body of the consolidated unit to determine this status; and other provisions which the study commissions may choose to include.

On the effective date of the consolidated government, the consolidation plan and optional form of the consolidated unit "operate to dissolve" the participating units of local government, which are "deemed to be consolidated and merged into one local government unit under the name selected...."⁴ The new unit possesses all of the assets and inherits the liabilities, to the degree provided, of the participating governments. Montana law gives the consolidated government two years to review the legal enactments of each participating unit that are in effect at the time of the merger, but such enactments will remain binding until they are superseded by action of the new government.

Confederation

Confederation is a form of governmental merger, and most of the reasons for consolidation discussed above also apply here. Confederation is a variety of partial consolidation because participating local government units, to some degree, retain their separate identities. For this reason, confederation occupies a middle ground between complete city-

county consolidation and transfer of governmental functions.

Why Confederate?

It has been observed that the extent of merger in a given community is a function of the area's political climate and that the more complete a merger, the more difficult it is to secure voter approval. Confederation may be pursued primarily as a political expediency where consolidation is desirable but not palatable. It also seems that where the retention of separate representative structures is highly valued, a confederated compromise may be appropriate.

Most examples of consolidation in the United States have been of the partial variety, and one version has seen the retention of separate governmental jurisdictions with enumerated functions for each. Miami-Dade County is the best example of this federated, or two-tiered approach, where each level of government performs its own set of services. The areawide government, for example, supplies certain services to the residents of both urban and rural areas.⁵ Metropolitan Toronto preceded Miami-Dade County as the first North American example of a two-tiered government.⁶ There, the areawide government performs functions such as social services, water supply, sewage disposal, mass transit, and law enforcement. The local governments retain control over such functions as fire protection, local water delivery, and garbage collection.

Confederation, with its retention of two or more governmental administrative structures, resembles somewhat the Miami and Toronto systems. Although the two-tiered model does not wholly apply because of the impracticality in Montana of an actual areawide government, confederation does require the division of responsibility between at least one county and one

municipality. And, as is the case with federation, the specific division of functions can vary from instance to instance of confederation.

Confederation Under Montana Law

The Montana Legislature provided confederation as an alternative to only one kind of consolidation--merger of at least one municipality and one county. The legislature further stipulated that a confederated government can be created only by charter writing, and a governmental unit cannot be part of a confederation proposal unless its study commission has participated in a cooperative local government study. A confederation proposal will be adopted if a simple majority of the votes cast in the county on the question are for approval.⁷

The exact nature of the confederated system of government must be spelled out in a charter and Montana law mandates that the charter take up certain matters. (See Chapter VIII below.) It must lay out the executive-legislative arrangement of the confederated system; the participating county and each participating municipality can be given a separate legislative body and a separate chief administrative office, or the confederated unit of government can be given a "single executive" and/or a "joint legislative body."⁸ In addition, the charter must authorize a "simultaneous transfer of services" whereby "areawide services" will be supplied by the county and "local services" will be supplied by the municipalities.⁹ Furthermore, the charter will permit, in the future, mutual transfer of responsibility for providing public services.

The remaining items that Montana law requires in a charter for confederated government are identical to the contents of the mandatory consolidation plans discussed above. This part of the charter, therefore,

can be considered a plan of confederation; its contents pertain to settlement of outstanding debt obligations of the participating units, authorization of special service and taxing areas, disposition of the property and assets of the participating units, the official name of the new government, status of boards and political subdivisions of the participating units under the confederated government, and other matters that the study commissions choose to include.¹⁰

The charter, on its effective date, brings into existence "a confederated unit of local government."¹¹ The new unit is created by consolidating and merging the "corporate existence of the participating units to the extent provided by the charter."¹² Consequently, the former independent county and one or more municipalities become "parts of the new confederated unit of local government."¹³ The confederated unit of local government--not its individual parts--is "a political subdivision of the state." It has the "status of a county and an incorporated municipality for all purposes;" and, as such, replaces and is the successor to the participating county and any participating municipality.¹⁴

The 1975 Montana Legislature, therefore, provided that an entirely different kind of political subdivision might take root in the state. Confederation is a peculiar species of local government because, while the confederated unit itself alone possesses autonomous government status, its component "parts" can each possess an administrative and legislative arrangement. The law does not require, therefore, that the confederated unit, as such, possess one, single legislative body and executive spokesman.

Some Thoughts on Confederation

The confederated arrangement that is allowed under Montana law is new to Montana. In addition, there is no closely applicable model that Montanans can look to in other states. Implementation of a confederated government will be a pioneering experience. The nature of confederation, therefore, will mean that it undoubtedly will have a different complexion in each adopting community. This is because a confederated government can be established only through a charter. Consequently, the autonomy of the participating units and the division of governmental functions between them can reflect the particular situation of each community. Thus, the chief characteristic of confederation is its structural looseness.

If unappreciated, confederation's lack of structural rigidity could be a serious pitfall. However, the discretion afforded by the charter writing process can allow a sound governmental structure to emerge. Specifically, the cooperating study commissions must anticipate the following potential weaknesses: loose administrative coordination between the "parts" of the confederated government; exaggerated autonomy of the participating units; ambiguous legal status and clouded political visibility of the confederated government; and undue complication in administrative arrangements given the situation and needs of a community. These items will be discussed below.

Confederation, by its very nature, presupposes a massive task of coordination. Citizens of the "confederated unit of local government" will have their necessary public services supplied by the various "parts" of the unit, with the possibility that different aspects of the same service or closely related services will be supplied by the different confederated

"parts." Moreover, Montana law provides that each "part" can have its own separate legislative body and chief administrative office. These conditions could lead to a cumbersome and disastrous administrative situation.

There obviously is good reason to build some provision into the charter to overcome this administrative weakness and bring the parts sufficiently together in their operations. A single chief administrative official for both "parts" would facilitate the necessary coordination, and the confederation statute does permit a "single executive for the confederated unit of government." Some of the same results probably could be achieved by using an administrative assistant who would report to the several chief administrative officials in the confederated unit and be responsible for functional areas that especially need coordination. Besides these options, a charter could require all or certain department heads to report to the several chief administrators. The last two options, however, have all the obvious drawbacks of a person "serving two masters."

Coordination also could be achieved by making adjustments in the legislative structure of the confederated unit. In addition to permitting a separate legislative body for each "part" of the confederated government, Montana law also allows a "joint legislative body." This single legislative body for the whole "confederated unit of local government" could provide much of the necessary coordination. Finally, coordination could be achieved by providing in the charter for overlapping membership on the several legislative bodies; for example, members of the city or town "part" legislative body could automatically be members on the county "part" legislative body. As a result of either arrangement, legislative policy-making and oversight could be used to keep the operation of both "parts"

in touch with each other.

A confederated unit of government with a single legislative body clearly would begin to approximate a consolidated unit of government. But, the confederated government still would have its components, each with a separate chief administrator and with separate and designated responsibilities. The confederated unit would thereby retain its identifying characteristic, that is, an arrangement of semi-autonomous public bodies.

The second potential weakness of a confederated government has to do with the relative legal and political status of the total unit and its parts. Simply stated, this is a matter of who or what body acts and speaks on behalf of the "confederated unit of local government" (not the "parts"). There seems to be a problem if the "unit" is the "political subdivision of the state," but the "parts" possess the legislative, executive, and administrative machinery--and, therefore, the political presence and resulting visibility. A potential inconsistency exists between the unit's legal status, autonomy, and responsibility and its political inability to explain, defend, and bargain for itself as a unit of local government. This situation is the political manifestation of the same conditions that could lead to administrative problems in a confederated government. However, just as administrative coordination can be achieved through executive and legislative adjustments--especially by providing for a single executive and/or a single legislative body or overlapping representation--similar adjustments could resolve political inconsistencies in the confederated system.

The possible use of a single chief executive official and a single legislative body in a confederated government points up the fact that consolidation and confederation differ more in degree than in kind. Thus,

a confederated government, so structured, would not be very different from a consolidated government. There still could be, of course, two "parts" with separate responsibilities, but the absence of autonomous policy-making bodies and administrators would render these "parts" nearly meaningless. A confederated unit of government, therefore, must find its identity somewhere between the vying tensions of autonomy and coordination.

The foregoing discussion naturally leads to the question: Is confederation too involved for study commissions to entertain seriously? Confederation, as was mentioned above, represents a middle ground between city-county consolidation and transfer of governmental functions. Before considering confederation, however, study commissions should have explored and discarded the possibility that service transfers could meet the community's needs and, similarly, should have decided that consolidation is impractical. Study commissions should also be aware that two-tiered federation--the cousin of confederation--has been recommended primarily for areas where a large urban city is surrounded by many incorporated suburban units.¹⁵ The typical Montana situation--a county with a single urban community and many small towns--does not fit the federation and perhaps not the confederation model. Therefore, political conditions (for example, if consolidation will not "sell"), could be the only reason for recommending confederation in Montana. But the study commission that does so must be fully aware of the potentially disruptive features of this system.

Service Consolidation or Transfer

Reform oriented local study commissions are likely to find that present jurisdictional boundaries and administrative arrangements are often

inadequate for significant improvement of public services. During the voter review process one alternative open to a community that wishes to secure improved public services is transfer of the performance of certain public functions to another governmental unit. Such an innovative proposal may be necessary to accomplish the objectives of study commissions that feel they have a mandate to improve the quality of public life in their communities.

Why Consolidate or Transfer Services?

Service consolidation or transfer can appear as an attractive structural arrangement for small and large municipalities and for rural and urban counties. As a rule, economies of scale do not favor small governmental units. Their jurisdictions include too few people and too few taxable resources to afford varied and high quality public services. There is a possibility, however, that economies of scale could be realized, and modern social service functions provided, through service consolidation or transfer involving two or more governmental units. A larger municipality, on the other hand, may find that certain of its functions are being significantly duplicated by the county. Waste due to duplication and overlap could be eliminated by transferring the function to the urban county or consolidating the two operations.

For small towns, service consolidation or transfer could be based on an awareness that some services presently cannot be economically and efficiently provided and that the provision of some services should become more than a local responsibility. The level of government that would assume the small town's transferred functions normally would be the county. Likely candidates for consolidation or transfer are construction

and maintenance of roads, snow removal, and law enforcement. One advantage of this approach is that a larger area can handle more efficiently functions now administered by small units, because the larger unit is in a position to hire trained personnel and purchase proper equipment. Consolidation or transfer of function, therefore, presupposes not only diminution of the town government but also revitalization of rural county government. Transfer or consolidation of functions could lead to enlargement of the county's responsibilities and to strengthening of its administrative system.

For two or more rural counties, consolidation or transfer of functions might not hold the same advantages as they do for a small town and a county. Provision of some county services is quite obviously affected by population density. Road construction and road maintenance, for example, are likely to be nearly as costly for a multi-county service area; rural fire districts cannot be expected to serve a larger area efficiently; a central garbage pit for a multi-county area would not necessarily be practical. Those services that depend heavily on a pattern of distribution tied to transportation costs will not, therefore, be much cheaper in a multi-county area in Montana.

Other county services, however, may be more efficiently provided on a larger scale. Central purchasing and accounting operations, for example, could result in substantial savings. A decision to transfer or consolidate these services would reduce institutional overhead by eliminating one set of officials. An attractive feature of this arrangement is that the benefits of cooperation are realized without the liabilities of full-scale consolidation.

Service consolidation or transfer can allow study commissions to realize three reform goals: governmental units can retain their legal identity, governmental services can be improved, and reduced costs can be realized by giving up administrative responsibility for services. Staff overhead can be reduced and the internal organization of a government can be improved. Some offices can be taken off the ballot and appointive positions can be eliminated. The exact design of the study commission's proposal, therefore, will depend on its assessment of the community's problems and its reaction to such reform values as preservation of community identity, betterment of public services, and cost reduction.

Service Consolidation or Transfer Under Montana Law

The 1975 Montana Legislature provided an orderly procedure for Montana municipalities and counties to consolidate and transfer services and functions during the voter review process. This kind of cooperative arrangement only can be proposed by study commissions that have conducted a joint local government study. The commission's proposal is submitted to the voters separately from the alternative governmental form question, and the qualified electors must vote on each separate recommended item of service consolidation or transfer. Each transfer, to be adopted, need only be approved by a simple majority of those voting on the question.¹⁶

To insure that the proper groundwork has been laid for service consolidation or transfer, the legislature required that study commissions prepare a separate plan for each service or function to be consolidated or transferred. Each plan must cover the following details: nature of the service affected; effective date of the arrangement; how affected employees will be treated; disposition of property connected with carrying

out the service; budgeting system for the cooperative arrangement; and any other details that pertain to the "orderly and equitable" prosecution of the arrangement.¹⁷ Each plan for service consolidation or transfer also may provide for a method of administering the joint undertaking. All affected electors must receive a copy of the plan; adoption, as already mentioned, is the province of the voters, and service consolidation or transfer can be amended or terminated only through a referendum.¹⁸

Some Strengths and Weaknesses

This service consolidation or transfer procedure contains a number of strengths. It makes sure that such a cooperative arrangement will be based on a joint governmental study conducted in conjunction with deliberations leading up to recommendation of an alternative governmental form. The mandated report and plan(s) cover the sensitive administrative and political aspects of a cooperative arrangement. The statute gives such arrangements the status of substantial permanency. The central role of voters in approving and amending the service transfer or consolidation should reduce the likelihood that it will be altered at the whim of an administration or as a result of changes in personnel.

There are drawbacks, however, that can accompany a service transfer or service consolidation. Most importantly, democracy in a community could suffer a setback, since citizens could lose access to and control over officials who are responsible for public services. Service transfer or service consolidation also might prove to be an obstacle to more extensive reform in a community that really needs a multi-problem approach. Service consolidation or transfer is by its nature a piecemeal solution; its adoption could blind citizens to the need for an overall view of a

community's service situation. In addition, operational difficulties could attend this type of cooperative arrangement. For example, conflicts could arise between the two governments concerning pricing, cost allocation, and service schedules. Finally, the referendum process for amending the agreement could be a weakness if a community found itself at a disadvantage and change had to wait upon voter approval.

Disincorporation

The 1975 Montana Legislature also provided that city and town study commissions could submit a proposal for disincorporation to their voters during the voter review process. Disincorporation, strictly speaking, is neither a governmental form nor a cooperative arrangement. It is a radical governmental approach that says, "The best way to solve our governmental problems is to terminate our government." A city or town, by disincorporating, will lose its legal status and identity and, theoretically, will receive in exchange equal or better governmental services from the county at the same or reduced cost.

What Is Disincorporation?

Disincorporation may be a wise course of action for some Montana municipalities. Reasons exist why a community would want to divest itself of its corporate status and turn to the county and special districts for necessary public services. For example, some small towns in the state may have been forced into incorporation by the previous inflexibility of Montana law,¹⁹ and disincorporation could offer a release from many burdens. Where these towns presently might be saddled with inefficient services, unnecessary and incompetent officials, and a low tax base, disincorporation could provide a route to improved governmental performance.

Disincorporation is a different conclusion stemming from the same analysis that would precede service consolidation or transfer. It should be resorted to only after certain findings. The following questions can be used to determine if the community's corporate existence is marginal and if disincorporation would be of benefit:

1. Is the community's population caught up in a cycle of decline?
2. Is assessed valuation dropping?
3. Is there a high level of tax delinquency?
4. Is the tax burden high and increasing?
5. Are the variety and quality of public services adequate to meet the community's minimum needs?
6. Has the town failed to exercise certain governmental powers for a period of time--for example, two years?
7. Is there significant governmental ownership of land in the community that would result in continuing reduction of property tax revenue?²⁰

In larger municipalities, study commission analysis of community conditions might suggest either city-county consolidation or disincorporation as a solution to community problems. Disincorporation could result in many of the same benefits as consolidation: high visibility of governmental authority; elimination of duplicated public functions and services; clearer lines of representation and accountability; ability to take advantage of economies of scale; elimination of tax and service inequities due to arbitrary location of city boundaries; improved planning capability; and improved articulation of the needs of the whole community. The decision to seek these benefits through disincorporation rather than city-county

consolidation probably would, as mentioned earlier, be based primarily on political considerations. It might appear that consolidation would be impossible, mostly because of voter hostility in the county area outside of the city's boundaries. But disincorporation, resulting in one government for the concerned city and county, would require approval by a simple majority vote of the city's electors only. Disincorporation also could be used as a political ploy by city residents to stimulate interest in consolidation and to overcome hard-core rural resistance to it. The threat of a city disincorporation, to be achieved on a unilateral basis, could prompt joint city-county discussion on consolidation in which the county would have a better chance to secure some of its objectives.

Disincorporation of either a city or a small town would make a community the responsibility of the county. As with consolidation or transfer of a public service, the disincorporating community would want to make every effort to insure that the receiving (county) governmental unit would have the capability to pick up the additional responsibility. A move for disincorporation, without assurance of competency or accompanying changes in county government, could mean sacrifice of local autonomy without any measurable benefits. The review process, of course, cannot guarantee county capability; a disincorporation proposal could pass and a county reform measure could fail.

Under Montana law, special elections on study commission recommendations may be scheduled any time in 1976 on or before November 2, 1976.²¹ As a result, a municipal study commission may have the opportunity to schedule the vote on disincorporation after the referendum on the county study commission's recommendation. Therefore, municipal residents voting

on the disincorporation proposal would have exact knowledge of what kind of county government would be "inheriting" them. A disincorporation vote prior to the county review referendum, on the other hand, could--if it were successful and early enough--serve as a stimulus to the county study commission and county residents to push for specific county reform to accommodate and complement the disincorporation decision. But, as was previously pointed out, disincorporation could pass and county reform could fail, or significant county reform might never be proposed by the county study commission. Therefore, a special election on disincorporation held prior to the county referendum entails more political leverage but also more risk than one that is held subsequently.

Available data indicate that some small town residents in Montana would reject such a radical governmental alternative as disincorporation in favor of preserving community identity.²² Where conditions seem to demand substantial governmental restructuring, therefore, study commissions must provide for some arrangement to enhance or preserve the feeling of "community." Such a result could accompany disincorporation and the use of special service districts within the county. Study commissions or county governments could require the institution of community councils in areas that include disincorporated or unincorporated communities or special service districts. Members of these community councils would work closely with their representatives on the county legislative body. This arrangement could preserve or possibly stimulate a sense of community, with the community councils taking the form of public forums in both rural and unincorporated urban areas.

Disincorporation Under Montana Law

A city or town study commission is enabled by Montana law to propose disincorporation during the voter review process.²³ It is important to note that a disincorporation proposal cannot be placed on the ballot between April 15, 1974, and December 31, 1976, by any group other than the study commission. This means that an ad hoc group could not confront voters with a disincorporation question during this period, with the intent that the study commission could recommend another reform alternative depending on the referendum outcome.²⁴ There is no requirement that a cooperative study with the concerned county precede the municipal commission's recommendation.

The disincorporation proposal will fulfill the study commission's statutory and constitutional obligation to submit an alternative form of government to the municipality's voters. Even though city and town residents will not be given the opportunity to select an alternative form of municipal government, they will have the chance to choose a radically different alternative governmental arrangement (disincorporation) and still have the opportunity to vote on an alternative county governmental form.

A study commission that submits a disincorporation proposal must accompany its recommendation with a final report. This report will contain a certificate of disincorporation and a discussion of the advantages and disadvantages of disincorporation.²⁵ If a majority of the municipality's electors voting on the question approve the proposal, disincorporation becomes effective on May 2, 1977.²⁶

Montana law also requires certain steps be taken to allow for a smooth disincorporation process. The municipal study commission must include in

its final report a "recommended plan of disincorporation" that will contain suggestions for ordinances and provision of services through special districts. The legislative body of the county in which the disincorporation occurs must then pass ordinances to secure an orderly disincorporation. It can set up special tax and service districts to meet the needs of the now unincorporated community. Many specific details of the disincorporation process, however, are covered by statutory law. If a municipality disincorporates, for example, its assets must be transferred to the county government but the taxpayers of the formerly incorporated municipality must retire their own bonded indebtedness.²⁷

Montana law thus requires sufficient analysis and public information to insure that such a radical step as disincorporation is not taken lightly. But if it does occur, disincorporation could constitute a frank admission by some towns of their inability to supply essential public services, or a statement by some larger cities of the absurdity of their supplying services in an urban setting where jurisdictional boundaries are not related to consumption or demand.

In either case, disincorporation must not result in denying local residents a voice in the governmental mechanism that supplies their services. How ever this is avoided--whether by representation on a policy-making body or consultation through advisory community councils--the fact remains that democratic values should not be sacrificed for efficiency. This observation is especially important because Montana law does not require a cooperative municipal-county review before disincorporation is recommended. Study commissions, therefore, must be all the more alert to the need for insuring adequate representation for unincorporated

communities after disincorporation occurs.

Conclusion

Local government study commissions have the opportunity during the voter review process not only to recommend an alternative governmental form but also to suggest some kind of intergovernmental cooperative arrangement that can overcome the handicaps imposed by present jurisdictional boundaries. These structural approaches range from the simple and commonplace to the complex and extremely rare. What they all have in common, however, is the purpose of reaching out beyond established governmental boundaries to secure increased public benefits or to share mutual public burdens. The opportunity to adopt these cooperative arrangements was provided by the Montana Legislature so that all counties and municipalities in the state could be better equipped to anticipate and solve their present and future community problems.

The 1975 Legislature made available one additional local government reform alternative that is closely related to both optional governmental forms and intergovernmental cooperative arrangements. This is the self-government charter writing process. A self-government charter can contain a unique, community-designed form of government, and it has special significance for communities that are contemplating confederation or some version of consolidation. The key characteristic of charter writing is its inherent flexibility which can enable study commissions to formulate a complete reorganization proposal that is tied in all its details to the communities' specific conditions. The discussion will turn to the subject of charter writing in the next chapter.

FOOTNOTES

¹Revised Codes of Montana, 1947, 16-5117, 5119, and 5120.

²Revised Codes of Montana, 1947, 16-5124(4) and (5).

³Revised Codes of Montana, 1947, 16-5117(4), 16-5119(3), and 16-5120(4).

⁴Revised Codes of Montana, 1947, 16-5117(5), 16-5119(4), and 16-5120(5).

⁵See Edward Sofen, The Miami Metropolitan Experiment (Bloomington: Indiana University Press, 1963).

⁶See Advisory Commission on Intergovernmental Relations, Regional Government: Promise and Performance (Washington, D.C., May 1973), and A Look to the North: Canadian Regional Experience (Washington, D.C., February, 1974).

⁷Revised Codes of Montana, 1947, 16-5118(1), (2), and (3).

⁸Revised Codes of Montana, 1947, 16-5118(4) (d).

⁹Revised Codes of Montana, 1947, 16-5118(4) (b).

¹⁰Revised Codes of Montana, 1947, 16-5118(4) (e) to (i).

¹¹Revised Codes of Montana, 1947, 16-5118(5).

¹²Revised Codes of Montana, 1947, 16-5118(6). Emphasis added.

¹³Revised Codes of Montana, 1947, 16-5118(7). Emphasis added.

¹⁴Revised Codes of Montana, 1947, 16-5118(8).

¹⁵See Committee for Economic Development, Reshaping Government in Metropolitan Areas (New York: The Committee, 1970).

¹⁶Revised Codes of Montana, 1947, 16-5121(1) and (5) (b) and (c).

¹⁷Revised Codes of Montana, 1947, 16-5121(3).

¹⁸Revised Codes of Montana, 1947, 16-5121(4), (5) (a) and (6).

¹⁹See discussion above in Chapter II of early Montana incorporation activity,

²⁰See Clyde F. Snider, American State and Local Government (New York: Appleton, Century, Crofts, Inc., 1950), p. 376.

²¹Revised Codes of Montana, 1947, 16-5124.

²²See Anne S. Williams, "Preliminary Statement of General Recommendations: Six County Projection of Social and Municipal Service Needs Resulting from Coal Development" (Bozeman: Center for Interdisciplinary Studies, Montana State University, February, 1974), p. 28.

²³Revised Codes of Montana, 1947, 16-5122(1).

²⁴Revised Codes of Montana, 1947, 16-5114,

²⁵Revised Codes of Montana, 1947, 16-5122(2).

²⁶Revised Codes of Montana, 1947, 16-5122(4) and (5).

²⁷See Revised Codes of Montana, 1947, 16-5122(6), (7), and (8), and Montana Commission on Local Government, Local Government Review Bulletin, I:3 (November 8, 1974), p. 51.

CHAPTER VIII

CHARTER WRITING FOR MONTANANS

Charter writing came to Montana by way of the 1972 state constitution.¹ The 1975 legislature then laid down the ground rules for carrying out the process.² Although this phase of local government reform activity is new to Montana, a charter-writing movement can be said to have existed in the United States as early as the first years of the twentieth century. And, the reasons Montanans were given the opportunity to write a charter are similar to those that have sustained the national charter-writing movement for the past 75 years.

What is Charter Writing?

The best way to understand a local government charter is to compare it to a state constitution.³ Both are fundamental legal documents that set out how the government is to be organized and what powers it can have. In addition, some charters include a description of various governmental functions and procedures. A local government charter, therefore, is the basic source for understanding the formal structure, powers, rights, and duties of a city, town, or county. It serves much the same purpose as the United States Constitution does at the national level. A charter is written by local residents, and it symbolizes very clearly and directly a government of the people's own making.

It must be pointed out, however, that legally a local government charter is a less fundamental document than a state or national constitution. A charter is subject to the provisions of both the United States Constitution and the applicable state constitution. In addition, certain specifics of a charter can be overruled by the state legislature. Despite these limitations, a local government charter gives a municipality or

county greater control over both its internal affairs and how it handles community problems.

Writing a charter is a time of new direction and almost of new birth for a county or municipality. The charter community looks more to itself than to the state legislature when deciding whether or not to take on a particular activity. In varying degrees, a charter itself is the means of acquiring local authority to act and also the source of limitation on contemplated actions. The charter endows a local government with increased freedom to act on its own to solve its problems. It is obvious, though, that the charter is no cure-all for those difficulties; it is merely an approach for bringing the solutions into closer reach.

A local government charter is normally the product of an intensive examination by a charter commission of a county or municipality's total operation.⁴ The commission asks whether the unit is serving the people who live within its boundaries. Very simply, this means: Is the local government doing well what it has already undertaken, and has it undertaken all the tasks that properly are its responsibility? The charter resulting from this study process is somewhat of a local declaration of independence because it results in increased freedom and discretion for counties and municipalities to adjust to new situations. But, the charter-writing process contains another important, though indirect, benefit. Whether or not it helps to solve concrete problems, the process of writing a charter can result in citizens feeling good about their government because they had a hand in designing it.

Charter writing in Montana will involve some of the things that have characterized its implementation elsewhere in the nation. The charters of

Montana counties and municipalities also are certain to possess native properities. The kind of charter anticipated by the Montana Constitution, the kind of process provided by the Montana Legislature, the complexion of local charter-writing commissions, and the peculiar flavor of Montana units of local government, all will have a part in defining the Montana charter-writing experience. This chapter will attempt an answer to the question: What, specifically, does charter writing mean in Montana?

Why Charter Writing Came to Montana

Members of the Local Government Committee of the 1971 Montana Constitutional Convention were responsible for including the charter-writing provision in the new state constitution. These delegates repeatedly stressed that the goals that guided their work were "accountability" and "flexibility,"⁵ They felt that citizens should have considerable control over their governments and that local communities should have the opportunity to reflect the diversity that prevails in Montana in the governmental structures and powers they adopt.

The Local Government Committee gave considerable thought to both the charter-writing process and the nature of the charter itself. In its deliberations on both matters, the committee applied the standards of "accountability" and "flexibility." The Committee anticipated that the key participants in the charter-writing process would be local citizens. A commission so comprised would allow more people to become directly involved in their government. Such community based citizen-commissions also could give necessary attention to unique local conditions and would not have to rely on a distant state legislature for ready-made alternatives.

The Local Government Committee also felt that charters drafted locally, unlike previous charters authored by the legislature, should contain provisions dealing with both local government structure and powers. First, charter writing would encourage local units to experiment with customary approaches to organizing local governments or to design a completely novel form of government. From a broader perspective, charter writing was seen as a method of molding a governmental structure to the particular shape of a community's needs and aspirations.

Delegates to the Montana Constitutional Convention next provided that a charter would contain self-government powers,⁶ so that the authority and responsibility of charter-writing communities could be increased. From the "flexibility" standpoint, the delegates thought that it was impossible for the legislature to anticipate and accommodate the needs of big and small, urban and rural communities. They decided that local governments could be trusted to exercise power over their own affairs in a responsible fashion. And, from the "accountability" perspective, political responsibility would be increased because local officials, quite visible to the community, would be given greater authority to act on local problems.

The Local Government Committee of the Montana Constitutional Convention set out to write a local government article that would serve the needs of all of Montana's municipalities and counties for decades to come. Writing for tomorrow as well as today, the committee incorporated into its article "new devices to make local governments more responsive and responsible."⁷ The king pin of the article, the device for securing these goals, was charter writing. Through this important process, it was hoped that local government units could free themselves from legislative disinterest

or inaction and enter upon an unprecedented era of autonomy and discretion.

How the Montana Legislature Defined Charter Writing

The 1972 Montana Constitution gives the legislature authority to provide procedures that permit "a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question."⁸ At the same time, the constitution goes on to make some specific statements about what a charter will contain. It is clear that a charter can have sections dealing with both local government structure and powers, Article XI, Section 5 (3) says, "Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions," and Section 6 of the same article extends "self-government powers" to any local government unit adopting a charter. Although the constitution lays out the general shape of what a charter will look like in Montana, the legislature still had to decide on the details of the charter-writing process. Each charter-writing community can then fill in the specific content or substance of its document. In Montana, therefore, both the legislature and local government study commissions have a critical role in self-government charter writing.

Charter-Writing Procedure

During its 1974 and 1975 sessions, the Montana Legislature enacted procedures for writing self-government charters. Through July 1, 1977, the charter-writing process is joined with the voter review of local government process. This means that all of Montana's 182 local government study commissions elected or appointed in November, 1974, have the option of submitting

to the voters of their communities either an alternative form of government provided by law or a self-government charter. The legislature will later enact a permanent measure to provide procedures for writing a charter.

It is worth noting that some states limit charter writing to units of a certain size and often to municipalities. Constitution convention delegates left such a limitation to the discretion of the legislature, and that body decided to make the process available to all Montana counties and municipalities.

Accordingly, the timetable and procedures for the first round of charter writing are identical with the voter review of local government timetable and procedures. The study commissions held their first meetings in November, 1974, and by October 1, 1975, they must conduct one or more public hearings to gather information concerning the current condition of local governments. By June 1, 1976, each study commission must write and distribute a "tentative proposed report" which will contain all of the same kinds of information that will be included in the final report of the commission. A study commission, by the publication date of this tentative report, will have decided to propose either an alternative form or a self-government charter. One or more public hearings will be held on the tentative report, but a commission must schedule these at least thirty days after the report is distributed. By August 1, 1976, each study commission will adopt its final report. This report will contain the charter or the plan of proposed new form of local government, and it will be widely distributed and publicized. Finally, each study commission will schedule the vote on the charter or the alternative form for sometime in 1976, but the election must be on or before November 2, 1976,

In a similar manner, the Montana Legislature established uniform procedural and organizational requirements for study commissions that apply whether the commission is submitting a charter or an alternative form of local government to the voters. Therefore, commissions writing a self-government charter can hire staff, retain consultants, establish citizen advisory boards, seek the assistance of public and private agencies, and prepare its budget for fiscal years 1976 and 1977. A study commission also may submit up to three separate suboptions, or parts of the charter, to the voters as separate questions. The legislature also gave each study commission the power to determine its own internal organization and to adopt rules covering procedural matters not handled by the legislature.

Structural Aspects of a Charter

Although the Montana Legislature treated the timetable and procedures of a charter-writing commission in a rather exhaustive fashion, the spirit of the Constitutional Convention with respect to the structural aspects of a charter was observed and the legislature left this matter largely to the discretion of each commission. The legislature placed very few limitations on the form of local government that can be included in a charter. Provision must be made for a legislative body, either elected or consisting of all of the local government unit's qualified voters. In the latter instance, a town meeting form of government would be created; that is, each elector would serve in the capacity of local legislator for that particular local government. If the members of the local legislative body are to be elected, the charter must specify the number on the body, the length of the term of office, whether terms are to be staggered, and the procedures for

removing office holders and filling vacancies.

In addition, the charter must indicate whether members of an elected legislative body will be nominated and elected by districts, at large, or by some combination of these two approaches. If districts are used for either nomination or election, they must be apportioned according to population and candidates must reside in the district for which they are running.

The Montana Legislature also placed minimal restrictions on the administrative and executive functions to be provided for in the charter form of government. The legislature required that the charter identify chief executive and chief administrative functions. These functions can be the responsibility of one or more officials, and these officials can be members of the local legislative body. In addition, the single or plural executive/administrator can be elected or appointed, and the charter must specify term of office, powers and duties, and grounds for removal.

Other structural aspects of the charter form of government may be written into the charter or left to the discretion of the governing body of the local government. For example, either the charter or local ordinances can specify the officers, departmental structure, and use of boards and commissions. In addition, the use of community councils to assist members of the legislative body can be authorized by either charter or ordinance.

The Montana Legislature has allowed the charter form of government to be the vehicle of structural versatility originally envisioned by the Constitutional Convention. As a result, a study commission choosing to write a charter can design virtually any form of government to fit a community's special situation.

Power Aspects of a Charter

Besides dealing with the procedural aspects of charter writing and the structural characteristics of a charter form of government, the 1975 Montana Legislature also enacted a measure that concerns the powers of a chartered unit of local government. Article XI, Section 6 of the Montana Constitution says that a municipality or county that adopts a charter thereby receives self-government powers. This means that a self-governing unit can exercise any power that is not prohibited by the Montana Constitution, by state law, or by the charter itself. The 1975 legislature clarified to what degree the state would limit the self-government powers of a charter unit. Charter provisions must not be in conflict with these statutory limitations.

The legislature has chosen to restrict the self-government powers of charter units of local government in four ways. Some specific powers have been denied to self-government units.⁹ Legislators believed that these are strictly state matters. Not being of local concern, they should be exercised only through direct state activity.

Secondly, some powers can be exercised by self-government units only when they have been expressly delegated by the legislature.¹⁰ The rationale for this restriction was that the nature of some admittedly local powers requires that they be exercised uniformly. This uniformity and harmony only could be achieved through specific authorizations by the state.

The Montana Legislature placed a third kind of restriction on self-government units. Legislators felt that both the state and self-government units could have a legitimate interest in exercising certain powers. In such areas, the legislature left the self-government unit completely free to act unless a state agency or officer is already actively involved. In cases of such ongoing state regulation or control, concurrent activity by

a self-government unit is permitted as long as its standards or requirements are not lower than the state's. The self-government unit remains free to require a higher standard of performance. It is important to see that in this situation the state does not deny powers to self-government units; it only limits them to the degree necessary to guard against the undermining of clearly enunciated state standards.¹¹

The fourth and final kind of limitation that the legislature placed on self-government units was in the nature of mandatory provisions.¹² For the most part, these strict requirements have to do with duties that all local governments must perform as agents of the state, or they consist of regulations that the constitution requires the state to impose on all units of local government, or they are justified on grounds of due process to protect individual state citizens from the substantial impact of discretionary local action.

The 1972 Montana Constitution thus gives the state legislature considerable voice in defining Montana's charter-writing experience. While the legislature cannot veto a locally approved charter, and even though charter provisions dealing with structural characteristics of the charter form are superior to statutory provisions, the legislature nonetheless has had a significant hand in setting charter-writing procedures and fixing the limits of self-government powers. The legislature during its 1974 and 1975 sessions made its position clear on these procedural, structural, and power aspects of charter writing.

This legislative activity was required by the constitution. It established the ground rules for the advent of actual charter writing in Montana. Local government study commissions that decide to write a self-government charter retain a vast amount of discretion and an awesome

responsibility. These commissions can design almost any conceivable charter form of government, and they possess the constitutional authorization to place additional limits on the exercise of self-government powers. Consequently, the outcome of charter writing in Montana, whether good or bad, can be attributed to both the state legislature and the individual local study commissions.

The Charter Commission: Amateurs Plus Experts

Charter writing is an exacting and challenging undertaking. An observer of recent charter-writing experiences in Pennsylvania had the following reaction:

Only those seriously involved in the process can fully realize the difficulty of the charter drafting task--the thought process. . .involved, the tediousness of reviewing and weighing various words and phrases, the important questions and issues which arise to which there is no readily available "right answer," the sheer labor that is involved in terms of the time demanded in the task.¹³

The demands of charter writing are sufficiently burdensome that a study commission should ask whether the potential benefits warrant the undertaking. Specifically, the commission should ponder whether charter writing actually is necessary to acquire the desired flexibility in designing a form of government and the addition of self-government powers.

The decision should be based on a number of considerations: the kind of government-related problems that presently are confronting and will confront the community in the future; an appreciation of the nature and possibilities of self-government charter; and the availability of sufficient resources to carry out an adequate job of charter writing. This section will discuss the implications of a local study commission

taking on the job of writing a charter.

Assessing the Scope of Community Needs and Charter Possibilities

Each Montana local government study commission, whether it ultimately concerns itself with an alternative governmental form or with a charter, must attempt to anticipate what will be expected of local government in the days ahead. The constitutional convention analogy again serves well here. Commission members, like convention delegates, will assess the adequacy of the present governmental unit as a provider of essential public services and as a representative and responsive system for making public decisions. A charter-writing commission, however, more closely resembles a constitutional convention than a regular study commission because the responses available to it are more fundamental and exhaustive. A charter commission can meet present and anticipate future governmental problems by recommending changes not only in the form of government, but also in the total administrative organization and in the range of available powers. The proposal with respect to form is not limited by legislative options, but can take almost any conceivable shape.

If a study commission concludes from its analysis that some major reform is called for, charter writing may well be the proper avenue of response. To make this decision with confidence, the commission must fully realize what writing a charter will mean. A chartered local government unit will reserve for itself many decisions that previously were the province of the legislature. The county or municipality must be willing to take on the additional responsibilities involved and feel that it possesses the necessary skill and ability to exercise self-government

powers wisely.

Secondly, writing a charter will mean that the local government will have the capacity to make adjustments in its organization and powers to meet new situations as they arise. A study commission must decide whether this increased governmental capacity at the local level is politically desirable. When citizens realize that local officials are fully empowered to act in a given situation, the complexion of local politics may change overnight. Some may argue that increased demands and authority will result in hurried and incompetent government. Advocates counter that charter writing will result in governmental action that is timely and appropriate. A study commission electing to write a charter must related the specifics of its own community's political and public service situation to the key characteristics and accompanying effects of a charter.

Charter-Writing Skills

After a study commission has considered a community's public needs and the nature and possibilities of a self-government charter, its decision to go ahead and become a charter-writing commission should be grounded in a third finding. Commission members must conclude that they possess themselves, or have readily available, the necessary skills to write the kind of charter that will serve their community well.

A number of skills are needed. The nature of a self-government charter makes this very clear. The charter is a written document that defines the basic organizational structure of a local government unit and sets local limits on the exercise of self-government or residual powers allowed by the state constitution and legislature. As has been repeatedly empha-

sized, writing such a document is no facile undertaking. To do the job properly, a layperson who is a good writer, a public administration specialist, and a lawyer familiar with local government law all should be involved.¹⁴

A good writer is important because a charter is a legal document that lays down the terms of the fundamental existence of a local government unit. Laypersons, government officials, lawyers and judges will turn to the charter to determine how the municipality or county was meant to operate and what it can or cannot do. To the degree that the charter is written in an ambiguous, inconsistent, or sloppy fashion, the status of the government is put in doubt and the real intent of the charter commission may not be given effect. The first condition of increased and meaningful local government autonomy under a charter would seem to be a clearly and directly written document,

Secondly, a person should be available who is familiar with both principles of governmental organization and their performance in situations similar to the charter community. Since a charter commission has almost complete discretion in designing a government's administrative arrangement, it would be a grave mistake to leave these decisions completely open to unresearched and unfounded opinion or to well-meaning, but risky, experimentation. The unit of local government will have to live with the charter if it is adopted, and a cumbersome, ill-conceived structure could create worse problems than the commission was trying to overcome. The discipline of public administration is sufficiently developed to preclude such a sorry situation from developing.

A lawyer who has developed expertise in local government law is the

third resource person who is indispensable to a charter-writing commission. The contribution of the lawyer will be primarily in the area of the powers of local government. The lawyer must be able to advise the charter commission on the nature and the extent of the restrictions already imposed on self-government units by the state constitution and the legislature, and then advise and draft language concerning additional restrictions to be imposed on the unit by the charter itself. Working from the posture required by the "residual" concept, the lawyer must be sure the commission understands the range of power that state law leaves the self-government units. Then he must be certain that the charter language preserves the exact scope of residual power that the commission decides is desirable. Additionally, the lawyer must insure the commission and community that charter language is not in violation of the laws and constitutions of the state and federal governments. As with the other two requisite skills, this legal expertise must be available to allow the full realization of the promise of self-government charter writing.

A charter commission, therefore, will involve, in varying degrees, dedicated but governmentally inexperienced citizens, experienced former officials and highly specialized individuals. Each perspective is essential. Any commission that lacks a crucial perspective or skill among its membership or staff will have to turn to the outside for it. Failure to do so would amount to a disservice to the community and thus a denial of duty. Charter writing goes several steps beyond the process of voter review of local government forms in terms of difficulty and responsibility. It will be incumbent on each charter commission to see that its energies, abilities, and decisions are adequately supported and complemented

by expert assistance from one source or another.

What Constitutes Good Charter Writing

Charter writing, it has been repeatedly emphasized, is a complex and difficult undertaking that demands a weighty sense of responsibility. In Montana, the task will fall to elected and appointed members of local government study commissions and their staff. The burden on these commission members will be considerable, and, in most instances, their good will and dedication will go only part way to offset problems inherent in the composition of each commission.

Commission members may be newcomers to government and politics or amateurs at governmental reform, that is, interested and knowledgeable but governmentally inexperienced citizens. Good charter writing will hinge on overcoming or compensating for two prominent characteristics. First, whether distant or recent, their experience with local government and politics will have to be quickly supplemented for reasons of both work demand and public image. This can be done by arduous, systematic work and by prudently relying on the assistance of those who are expert and experienced.

The second weakness of study commissions is that each body is made up of diverse individuals. It is unlikely that a single view on the local government's future direction will be present initially. The chance exists that the work of the commission could be seriously disrupted by the force of strong personalities, uncompromising views and prejudices, positions and opinions voiced in the past, and different conclusions being drawn from recently researched facts. Good charter writing will depend on

willingness to compromise and a spirit of cooperation replacing antagonism between strong-minded persons.

The key to overcoming the handicaps of amateurism and unbending advocacy of a narrow reform perspective is well conceived organization and procedures. A charter commission that takes time to consider what kind of job it wants to do, and what it will take to do it, will stand a better chance of writing an adoptable charter.

The commission's job, accordingly, can be divided into five work stages. First the commission must structure itself in such a way that it can accomplish its work objectives. This consists of formulating a plan of work that will detail who will do what and when. Then, the commission must devise a research methodology and gather data on which to base its decisions. Next, in the designing and drafting stages, the data gathered by the commission is shaped into a tentative and then a final document. The last stage of commission work has to do with public education and presentation of the charter to the voters for their consideration.¹⁵

Some of the commission's conclusions will pertain to the nature of the charter form's legislative body and the extent of its powers, the nature and limits of administrative and executive functions, and the proper degree of separation between the branches. Other conclusions will be judgments about desirable administrative lines and departmental organization, personnel systems and practices, and fiscal procedures. Like framers of a constitution, charter writers would be wise to include only fundamental details, that is, items that are based on relatively permanent principles and are not subject to frequent change because of altering local conditions.¹⁶

A charter, therefore, should include such essentials as the extent of executive and legislative powers, how the executive and legislative powers will be carried out, and the degree of their separation from each other. It should specify how the citizen will exercise control over the performance of executive and legislative duties. These are basic matters--the heart of the charter commission's recommendations--and they should be subject to change only through a formal amending process.

On the other hand, there is reason why a charter should not contain organizational details as opposed to the basic plan of government. A charter would be a cumbersome and even crippling instrument if it required that adjustments in administrative organization and procedures be made through the charter amendment process. These matters should be left to the discretion of local government officials. So, although good arguments can be made to include such things as a merit system, departmental organization, or powers and duties of officials in the charters of some communities, as a general rule items of this nature should be left to the ordinance power of the local units.

These ordinances can then be assembled into an administrative code, a collection of local laws dealing with local government organization and procedure. Nothing precludes a charter commission, however, from drafting an administrative code and passing it on to the new government for its consideration and possible adoption. But many items that appear elsewhere in local government administrative codes will, in Montana, be handled by the state legislature. These include, for example, taxing, budgeting, and accounting procedures.

A charter also should read like a constitution. Not only should many

organizational details be left out, but descriptive details of included items should be kept to a minimum. The charter, like a constitution, will spell out the fundamental legal status of a local government. It will be consulted by lawyer and layperson alike to determine the rights and responsibilities of officials and other parties. If the document is not easily understandable, it could result in confusion and possible delay because of law suits. Comprehensibility depends on clear organization, use of ordinary words, consistent use of language, concise phrasing, and direct expressions. To achieve these standards of good drafting, the commission must decide whether its membership is competent to translate key decisions into a written document or whether this task should be given to others.

Like other groups of individuals which are required to work together and come up with a single product, study commissioners will find that success grows out of a good work atmosphere. If a good charter is to be written and adopted, each individual must have the experience of being listened to, playing a vital role in the commission's work and making concrete contributions to the final product. The joint work of the commission can exceed the achievements possible through the independent striving of separate members when it is organized and working in the pursuit of collectively defined goals. Since no single person can come up with all the answers independently, cooperation is required. A study commission, therefore, must remain open to the views and findings of all its members.

Reflective planning of the commission's business is the basis of good charter writing. A sense of purpose, a sense of unity, a sense of pace, and a sense of control will form the psychological grounding out of

which should emerge sound recommendations and a respected public image.

What a Charter Can and Cannot Contain in Montana

A local government charter in Montana will be somewhat different from charters in other states. This is the case because the fundamental conditions of charter writing can vary from state to state. The kinds of materials that are included in a charter depend upon the provisions of the state's constitution and the actions taken by the state legislature.

Although the specific details of charters show considerable variation, a general and somewhat representative charter outline can be constructed. A charter normally contains a preamble and the following articles, roughly in this sequence: powers of the unit; the legislative body; the chief executive and/or the chief administrative official; administrative arrangements; financial administration; elections; initiative and referendum; courts; general provisions; and transitional provisions. The significance of these charter components for Montana local government study commissions will be discussed below.

Powers of Local Government

The "powers" article will be stated in terms of limitations rather than grants of power. This is because the Montana Constitution and state law provides that a self-government charter unit may exercise any power not prohibited by the constitution, law, or its own charter. State law provides that these self-government powers are vested in the local legislative body. A charter, therefore, will approach powers in a negative rather than a positive fashion. In addition to the restrictions already imposed by the state constitution and legislature, the charter may place

further limitations which the study commission thinks are necessary and proper.

This feature of a self-government charter is one of its key characteristics. It is somewhat ironical that a charter can be used to limit even further the exercise of self-government powers when the charter-writing movement has been represented as a vehicle for strengthening the powers of local governments. In Montana, however, this characteristic may be a chief reason for writing a charter. It is possible for a unit of local government to adopt self-government powers during the voter review process without writing a charter, but local government units can place additional limitations on the exercise of self-government powers only through charter provisions. It is possible, therefore, that some study commissions may pursue charter writing because of its inherent conservative features with respect to self-government powers.

Plan of Government

The next two articles of a charter usually deal with the basic form of government. The treatment that the local legislative body should receive in a Montana charter is quite extensive. Montana law, for example, requires that the charter specify the number of persons serving on the body, their method of nomination and election, the length of their terms of office and whether or not terms are staggered, how vacancies are filled, and how an office holder can be removed. A charter, in addition to the above requirements, should include such details as qualifications for being elected and prohibitions on members, the selection and duties of the body's chairperson, the method of setting the body's agenda, and possibly, the

establishment or authorization of community councils. The 1975 Alternative Forms of Local Government Act can serve as a guide for designing the charter form's plan of government.

Other important matters concerning the local legislative body are provided for in state law. For instance, the Montana Legislature has laid down organizational and procedural requirements for all local legislative bodies in the state. These provisions include apportionment of districts, commission organization, commission meetings, commission hearings, procedural rules, committees, enactment and amendment of ordinances and resolutions, and codification of ordinances. In other states many of these items could be included in a charter, but in Montana the state legislature has made its action mandatory for both non-charter and charter units.

The "executive" article is the other part of the charter that spells out the basic plan of government. This charter article also will be quite detailed in Montana. It will indicate where the executive and administrative powers are vested and spell out the following characteristics of the office of chief executive: selection procedure, qualifications, term of office, vacancy and removal procedures, appointment and removal power, supervisory power, provisions for assistance, and other items of specific authority and responsibility. With respect to the chief executive and administrative function, the charter could be very similar to an optional form of government, including suboptions, provided by the legislature.

Administrative Arrangements

The Montana Legislature has given charter commissions a large amount of discretion in designing the charter article dealing with administrative

arrangements. The Montana Constitution, Article XI, Section 5 (3), says "Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions." The legislature then provided that, "A charter form of government shall have such officers, departments, boards, commissions and agencies as are established in the charter, by local ordinance or required by state law."¹⁶

The major question facing a charter commission, therefore, is not whether it or the state legislature has control over the administrative arrangement of a charter form of government. It is, instead, whether the charter should specify such things as departmental structure, the nature and use of independent commissions, and the nature of the personnel system, or whether the charter should leave such concerns to the discretion of the local legislative body.

Financial Administration

A charter article treating financial administration and financial procedures will not be necessary in Montana. All units of local government in Montana, including those with self-government charters, will be required to follow the local government financial administration measures passed by the state legislature. This is a requirement of the Montana Constitution. Sections 10, 11, 12, and 13 of Article VIII mandate the legislature to regulate local government debt, the use of loan proceeds, the investment of public funds, and to "insure strict accountability of all revenue received and money spent by. . .counties, cities, towns, and all other local government entities."

Statutory law in Montana, accordingly, will cover many items that

in other places might be incorporated in a charter. These include: fiscal year dates, accounting procedures, budgeting and appropriation procedures, tax levy and special assessment procedures, administering of bond issues, capital planning and budgeting, auditing, financial reporting, deposit and investment of public funds, purchasing, leasing, selling and contracting, tax subjects, special assessments, service charges, fees, licenses, short term debt, general obligation debt, revenue bonds, and special assessment debt.

Two additional points concerning the treatment of local government financial administration in Montana should be made. First, it deserves emphasis that the authority to impose an income or sales tax requires explicit delegation by the state before a charter unit is empowered to act. The only mention of taxing power in a charter, therefore, would consist of a locally imposed limitation on the state authorization. Secondly, the charter should clearly specify responsibility for budget preparation, implementation, and administration. However, these details could be located elsewhere--in the "executive article for example--rather than in an article dealing with financial administration.

Elections

An "election" article is another part of a self-government charter made possible--but in Montana many of the key ingredients usually contained in such an article are reserved for action by the state legislature. A charter commission, accordingly, could either place the remaining provisions at other suitable places in the charter or write a short "election" article. This article would not contain such matters as election dates

and procedures for filing, primaries, conducting elections, and canvassing votes. These will receive uniform treatment by the state and apply to all units of local government.

Election-related matters that the charter commission can take up include determination of which officials are to be elected, the type of districting to be used, limits on terms of office, method of nomination, and whether or not partisan elections are to be held. These items probably would be best located in other than a separate "election" article because of their brevity and close relationship to the substance of the legislative and administrative arrangement.

Initiative and Referendum

The initiative and referendum are two special election processes that often are found in a separate charter article. In Montana, it is not necessary that these matters appear in a charter at all. Article XI, Section 8 of the Montana Constitution directs the legislature to "extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit." While a charter commission, therefore, will not have to act to secure these rights, it can decide to exclude application of initiative and referendum on certain subjects and make them mandatory on others.

Judiciary

A "judiciary" article is another frequent component of local government charters that in Montana will be unnecessary. The Montana Constitution excludes judicial powers from the list of local government authorizations to charter communities. Article XI, Section 5 (3) reads, "Charter

provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions." The judicial function, therefore, is a power that every Montana local government unit is prohibited from exercising except as it is specifically delegated to them by the state. The Montana legislature felt that this approach would preserve uniform statewide standards and procedures.

General Provisions

Local government charters in other states frequently include a "general provisions" article. This type of article also can be placed in a self-government charter in Montana. It can include a "separability" clause, a conflict of interest standard, and prohibition on certain kinds of behavior, such as bribery, and discrimination on grounds of sex, age, or race. Items often found in this article in other states, however, cannot be included in a charter in Montana. The charter amendment power, the power of eminent domain, and extra-territorial powers, for example, are subject to the explicit terms of state delegation and regulation. The state's intent, again, is to protect certain interests by way of uniform requirements,

Transitional Provisions

An article containing "transitional provisions" appears with some regularity as the last part of a local government charter. But, again, the usual provisions of this article have been taken care of by the Montana Legislature. For example, Montana law provides for the following transitional concerns: a statement of the new government's right to succession; a statement of the status of old government ordinances under

the new government; new government status of members of the old legislative body; new government status of old government employees; the first election of the new government officials; and the effective date and first meeting of the new government. Little reason exists, therefore, for including a traditional "transitional" article in a self-government charter.

A charter commission in Montana, however, has discretion under law to write down some suggestions about how the transitional phase should be handled. This transition plan is intended to be advisory, not binding, on the new government. The plan can contain suggestions dealing with such matters as treatment of old officials and employees, new ordinances, inauguration of consolidated services and functions, and administrative reorganization. These recommendations, it should be emphasized, normally would not be part of the self-government charter itself.

Consolidation and Confederation Provisions

A local government charter in Montana can, in some instances, contain an additional dimension that is required by state law. When the charter commission proposes either a consolidated or a confederated plan of government, a consolidation plan or a confederation plan must be prepared. In the case of consolidation, the plan may or may not be included in the charter. But in the case of confederation, the elements of a confederation plan must be part of the charter because writing a charter is a requisite for recommending confederation.

When a self-government charter includes a consolidation plan or a confederation plan, Montana law is specific about its contents. That part of the charter must contain the following provisions: adjustment

of outstanding financial obligations; establishment of service areas; disposition of property and outstanding credits; the name of the new governmental unit; disposition of boards, commissions, and other autonomous governmental agencies; and other provisions that the study commission chooses to include that are consistent with state law. These "other provisions" could include details about the powers and duties of officials in the new government. Such elaboration would ordinarily be considered bad charter writing but, in the case of governmental merger, these kinds of provisions could strengthen the chances for adoption. Old government employees would be more willing to support merger if they knew their jobs were secure in the confederated or consolidated government. It seems proper that these matters should be included in a separate "consolidation provisions" or "confederation provisions" article.

A self-government charter written by a Montana municipality or county will, therefore, resemble in some ways the local government charters of other states. It would be a serious mistake, however, to rely very heavily on these other charters, model or actual, during the designing and drafting stages of a charter commission's work. After all, a central purpose of charter writing is to take advantage of its inherent "flexibility." In their broad outlines and essential parts, self-government charters in Montana will be unique. Again, this is because of the special role the state constitution and the state legislature play in the Montana charter-writing process. Given these fundamental conditions of charter writing in Montana, the work of charter commissions will, of necessity, be pioneering and quite exacting,

Concluding Remarks

Montana enters its charter-writing era rather late relative to other states. But the experiences and records of these other states can have no wholesale application to the work of Montana charter commissions. Commission members will have the difficult task of chiseling out the first steps of Montana's charter-writing experience. The promise of this effort must be weighed against the potential pitfalls.

The decision to embark upon charter writing should be based on a realistic assessment of the limitations and benefits of the process in Montana. In most other states, charter writing is a method of taking on additional local government powers or acquiring a form of government not provided by the legislature. Charter writing is not necessary for either of these objectives in Montana. The legislature has provided a vast array of optional forms of government for counties and municipalities, and any form except commission government can be given self-government powers through the voter review process. Moreover, as seen above, the Montana Legislature will control many aspects of local government that in other states are reserved to local jurisdictions through charter writing. These limitations on what can be accomplished solely through charter writing diminish, to a degree, the usefulness of the process in this state.

On the other hand, charter writing can secure certain advantages for some communities, the greatest benefit probably accruing to those which recommend some form of governmental merger. Consolidation, for example, entails a large number of complex governmental arrangements and political understandings. For the most part, these matters will have to be concluded in a spirit of compromise. The nature of a charter--a fundamental

and relatively permanent document--can assist in achieving an agreement. Both sides will rest more secure if the meeting of minds is given charter status.

A county or municipal study commission that elects to write a charter also will be able to deny powers to its local government in addition to the limitations imposed by the Montana Constitution and state law. This is not the case where an optional form of government provided by the legislature is adopted with self-government powers attached. Charter writing, therefore, allows greater control of local government powers, albeit a negative variety of control.

Charter writing should not be undertaken lightly by Montana study commissions. Such a decision should be a conclusion to an exhaustive cost-benefit analysis. For those who decide to go ahead, however, thoughtful procedures and thorough work will spell the difference between failure and success. For certain Montana study commissions, it may be worth the challenge.

FOOTNOTES

¹Montana Constitution, Article XI, Section 5 (1).

²Revised Codes of Montana, 1947, 16-5105.

³William N. Cassella, Jr., "The Role of the Charter Commission," Public Management (July, 1971), p. 19.

⁴National Municipal League, A Guide for Charter Commissions. New York: The League, 1972, pp. 5-6.

⁵See Montana, Constitutional Convention, Local Government Committee Proposal (Helena: Constitutional Convention, 1972), p. 7 and passim.

⁶Montana Constitution, Article XI, Section 6.

⁷See Montana, Constitutional Convention Local Government Committee, Comments on Local Government Article (Helena: Montana Constitutional Convention, 1972), p. 1.

⁸Montana Constitution, Article XI, Section 5 (1).

⁹Revised Codes of Montana, 1947, 47A - 7 - 201.

¹⁰Revised Codes of Montana, 1947, 47A - 7 - 202.

¹¹Revised Codes of Montana, 1947, 47A - 7 - 203.

¹²Revised Codes of Montana, 1947, 47A - 7 - 204.

¹³Christine Altenburger, "Preface to a Home Rule Charter," in Home Rule and Optional Plans (Harrisburg, Pennsylvania: Department of Community Affairs, 1973), p. 26.

¹⁴See National Municipal League. A Guide for Charter Commissions (New York: The League, 1972), pp. 6, 18, 20, 24.

¹⁵For a treatment of the organizational, study, report, recommendation and campaign stages of a study commission's work, see Lauren S. McKinsey, A Procedural Checklist for Local Government Study Commissions (Missoula: University of Montana, Bureau of Government Research, forthcoming, 1975).

¹⁶See J. Devereux Weeks and Walter Stoneham, Drafting A Virginia Municipal Charter (Charlottesville: University of Virginia, Bureau of Public Administration, and Virginia Municipal League, 1963) for a thorough discussion of charter-writing decisions and procedures.

¹⁷Revised Codes of Montana, 1947, 47A - 3 - 208 (9).

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